HINDU LAW IN ITS SOURCES

GANGANATHA JHA

VOL. II 

DEALING WITH INHERITANCE

ALLAHABAD
THE INDIAN PRESS, LTD
1933

Printed and published by K. Mittra, at The Indian Press, Ltd.,
Allahabad.

PREFACE

A word of apology is due to the reader for the inordinate delay that has occurred in the appearance of this volume. A few friends, whose interest was aroused by the first volume, have been eager for the appearance of this second volume, treating of the subject of *Inheritance,* which is likely to be of more practical interest to our lawyers. All that I can say is that the delay has not been due to any remissness on my part; it was due to circumstances over which I had no control.

Another explanation is needed, in regard to the arrangement of the texts. The reader will notice that there have been repetitions of the same text in several places. This will be found to be the case with the metrical texts; it could not be avoided, on account of the metrical character of these texts, by which a single couplet sometimes contains more than one rule. An atonement has been made by means of a list of cross-references.

I record here my appreciation of the great help rendered to me by my old pupil and colleague at the Allahabad University, Dr. Baburam Saksena, who relieved me of the laborious task of compiling the Index, which, under his hands, has become more full, and hence more useful, than any that I could produce.

My best thanks are due to my friend and colleague at the University, Professor Sarat-chandra Chaudhri, over whose help I had no claims except those of friendship. He has contributed the Appendix, which, it is hoped, will render the book more practically useful than it would have been without it; and it is the one thing that I could never do myself. In this matter, I am also grateful for the help that has been rendered by Mr. Sharadindubhuṣana Banerji, the son of my late lamented friend, Dr. Satish Chandra Banerji.

Readers of the Introductory chapter of the *first* volume know that the inception of the work was due to a keen desire on my part to see Hindu Law properly codified, in order to save it from the danger of being swallowed by the "case-law" that was constantly trenching upon its precincts. In the course of my reading I have come across a typical case where the misunderstanding of a Mīmāṁsā principle, and hence of a particular aspect of Hindu Law, has led to the violation of one of the most cardinal principles of the Hindu Law of Adoption.

On page 215 of this volume,* the reader will find the well-known text of Vashistha forbidding the adoption of an only son, and on page 219, the text of Shaunaka to the same effect.

The authoritative character of this prohibition has not been questioned,—or sought to be qualified—by any Nibandha-writer, as will be clear from the Notes in this volume. Curiously enough, it was an eminent Indian jurist, Rao Saheb Vishvanath Narain Mandlik, who questioned (in his Hindu Law, pp. 416—506) the authority of these prohibitions, and held that these texts were only 'recommendatory' and not 'mandatory'. Among other things he says—'This text on the most approved principles of criticism must be treated as a recommendatory one'; and in support of his conclusion, he cites Shabara-Swami on Mimamsa-Sūtra, 1. 2. 26—30; and then proceeds to adduce 'arguments' in the regular style of the trained advocate advocating a particular cause.

What he says may be very good 'law, equity and commonsense'. But in seeking the support of the Adhikaraṇa of Purva-Mimaṁsā, he has clearly gone astray. He has entirely failed to understand the *Adhikaraṇa.* A reference to any standard work on Purva-Mimāṁsā (including Shabara) will show that the principle deduced under that Adhikaraṇa is that "when an Injunction is followed by the statement of a reason,—this *Statement of Reason* has no mandatory force"; certainly this does not vitiate the mandatory character of the Injunction itself. The passage cited by Shabara is—'One should make the offering with the winnowing basket [*Injunction*], *because by that is food prepared* [Statement of Reason]";—and the question raised is whether or not mandatory character attaches *to this latter statement*; that is, whether it is to be taken as containing the *injunction* that '*Food* should be prepared by the winnowing basket';—and the conclusion arrived at is that *this Statement of Reason* has no *injunctive* or *mandatory* authority,—that it contains only a statement commending what has been enjoined in the preceding injunctive sentence. So that, so far as the injunction regarding the *making of the offering with the winnowing basket* is concerned, the injunctive character of that has not even been questioned. Applying this to the case in question—The prohibitive text is that 'an only son should not be adopted or given away (Injunction), *because he is for the perpetuation of the family* (Statement of Reason)'; and the principle adduced in Shabara's Adhikaraṇa, if applied to this text would be

based on the question—whether or not mandatory character attaches to the Statement of Reason, and there would be no question regarding the injunction preceding it.

From the above it will be clear that the view of the great Indian jurist is not in accord with "the most approved principles of criticism," as claimed by him. And yet very important cases have, since the appearance of this book, been decided on the basis of this interpretation, and I understand that the Privy Council has also sealed the doom of the prohibition which has the support of all the most authoritative writers on *Dharmashāstra*.

Thus all unbiassed lawyers will, it is hoped, see how necessary it is to study Hindu Law, and along with it, and as its indispensable guide, the *Pūrva Mīmāṁsā*. Of course, only if the personal law of the Hindus is regarded to be worth while preserving. Rather than go on tinkering with it by means of spurious references to ancient authorities, it would be much fairer and straighter to discard it altogether as 'antiquated' and 'out of date.'

All that is hoped by the writer of this book is that it will arouse the interest of some such lawyers as may be still 'antiquated' enough to attach some value to our 'personal law' as embodied in the *Smṛtis* and the *Digests*.

In this connection I may take the opportunity of thanking those eminent friends who, by their appreciation of the earlier volume, have shown that there is still some ground for hoping that Hindu Law will be properly and *unbiassedly* studied by our lawyers.

पितु: श्रीतीर्थनाथस्यप्रभोर्लक्ष्मीश्वरस्य च ।
मातुस्तीर्थलतादेव्याः पादयोरिदमर्पितम् ॥
प्रीयतां चानया कृत्या पत्नी श्रीन्दुमती दिवि ॥

'MITHILĀ'
Allahabad
September 2, 1933

GANGANATHA JHA

LEGAL TEXTS AND DIGESTS UTILISED

Manu—Text—(Jolly: Trubner's Oriental Series).
,, with eight Commentaries (Ed. Mandalik).
,, ,, Medhātithi (English Translation: Ganganatha Jha, Calcutta University).
Yājñavalkya—with Mitākṣarā—Subodhini—Balambhattī (Ed. Setlur, Madras).
,, with Aparārka (Anandasrama Sanskrit Series, Poona)
,, Balakrīḍā (Vishvarupa)—(Trivandrum Sanskrit Series)
,, Vīramitrodaya—Tīkā—(Chaukhamba Sanskrit Series, Benares)
Narada—English Translation (Sacred Books of the East)
Bṛhaspati ,, ,,
Āpastamba ,, ,,
Gautama ,, ,,
Vashiṣṭha ,, ,,
Baudhāyana ,, ,,
Viṣṇu ,, ,,
Vivādaratnākara (Bibliotheca Indica)
Vivādachintāmaṇi (Pub.—Khemraj Srikrishnadas, Bombay)
Parāsharamādhava (Bibliotheca Indica)
Smṛtichandrikā (Mysore Series)
Jīmūtavāhana—Dāyabhāga—(Ed. Jivananda Vidyasagar)
Vīramitrodaya (Ed. Jivananda Vidyasagar)
Madanapārijāta (Bibliotheca Indica)

MANUSCRIPTS

Vivādachandra—Misarū Mishra (with P. Umesh Mishra, Allahabad University).

Vibhāgasāra—Vidyāpati Thakkura (with writer).

Dāyanirṇaya—Gopāla Pañchānana (with writer).

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17.	(Sixth line from bottom)	add "see p. 129".
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24.	(Eleventh line from bottom)	add "see p. 167".
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29.	(Under Notes on 42)	add "see p. 153".
31.	(Under Notes on 46)	add "see p. 119".
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36	(in Notes)	For "260", read "262".
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79.	(Sec. 98)	add "see pp. 130, 149".
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F. B

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505.	(Sec. 106)	add " see p. 449 ".
506.	(Sec. 107, Text)	For first line read "मृतोऽनपत्योऽ भार्यश्चेदभ्रातृपितृमातृक:"
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543.	(Sec. 19)	For " III 34, III 344," read " III, 35 ; II, 347 ; see pp. 400 and 469 ".
543.	(Sec. 20)	add " see p. 57 ".
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575.	(Sec. 60)	For 159, read "160; see p. 234".

CHAPTER I

Section 1 (a)

PROPERTY : ITS *SOURCES*; NATURE OF *OWNERSHIP*; MEANING OF '*DĀYA*'

PROPERTY AND ITS SOURCES

1. मनु 10. 115.] सप्त वित्तागमा धर्म्या दायो लाभः क्रयो जयः।
प्रयोगः कर्मयोगश्च सत्प्रतिग्रह एव वा ॥

There are seven lawful sources of Property :—Inheritance, Acquisition, Purchase, Conquest, Investment, Industry (Trade and Agriculture), and Rightful Gift.—(Manu, 10. 115.) [Quoted in *Mitākṣarā*, p. 604; *Parāsharamādhava*, p. 330; and *Vīramitrodaya*, p. 537 ; *Smṛtitattva* II, p. 350 ; *Vidhānapārijāta* II, p. 245 ; in *Hemādri-Dāna*, p. 41.]

NOTES

'*Dāya*' stands for property coming to a person by reason of his relationship.—'*Lābha*' 'Acquisition' (*a*) of buried treasure and such things; or (*b*) the share that one obtains out of the property acquired by one's father and other relations; though this also would be *inherited*, yet it cannot be spoken of as 'inheritance,' '*Dāya*,' because it belongs to several persons in common; or (*c*) '*Lābha*' 'acquisition' may stand for those loving presents that one receives from friends or from the father-in-law.—'*Jaya*,' conquest in battle.—'*Prayoga*' is money-lending.—'*Karmayoga*,' stands for trade.—The legality of these means of acquiring property depends upon the caste of the person concerned: The first three—Inheritance, Acquisition and Purchase are common to all men; Conquest is for the Kṣattriya only; Money-lending and Trade for the Vaishya only and Rightful Gift for the Brāhmaṇa only.—According to some people '*Jaya*' stands for winning at gambling; but this is not right; as gambling cannot be regarded as a 'lawful' means of acquiring property.—(*Medhātithi*.)

'*Dāya*' is property acquired by reason of relationship.—'*Lābha*,' is coming by buried treasure, or loving presents from some persons.—These three are 'lawful' for all the four castes.—'*Jaya*,' in battle, is 'lawful' for the *Kṣattriya*; and Money-lending and Agriculture and Trade are 'lawful' for the Vaishya;—'Rightful Gift' is 'lawful' for the Brāhmaṇa only.—(*Govindarāja*.)

'*Dāya,*' obtaining, by partition, of property belonging to one's father and others.—'*Lābha,*' finding, by chance, of hidden treasure.—'*Kraya,*' obtaining, by means of what already belongs to one, lands and other properties.—'*Jaya,*' obtaining by means of fighting.—'*Prayoga,*' augmenting one's belongings by means of art, trade and other means.—'*Karmayoga,*' obtaining wages by means of art and other means.—'*Satpratigraha*' is the accepting of such pure gifts as are not forbidden, from persons of pure character. The first three are for all men; '*Jaya*' for the Kṣattriya, '*Prayoga*' for the Vaishya, '*Karmayoga*' for the Shūdra, and '*Pratigraha*' for the Brāhmaṇa.—(*Sarvajñanārāyaṇa.*)

'*Dāya*' and the rest are the seven sources of property, which are 'lawful,' *i.e.*, in accordance with one's rights.—'*Dāya*' is property obtained by reason of relationship;—'*Lābha*' is obtaining hidden treasure or friendly presents. The first three are lawful for all the four castes.—What is obtained by conquest is lawful for the Kṣattriya only.—'*Prayoga*' means the augmenting of one's wealth by means of interest.—'*Karmayoga*' stands for agriculture and trade. These two are lawful for the Vaishya.—'*Satpratigraha*' is lawful for the Brāhmaṇa.—(*Kullūka.*)

'*Sources of property,*'—*i.e.*, means of acquiring wealth.—'*Lawful*' not illegal.—'*Dāya*' obtaining, by partition, the property of one's father and others.—'*Lābha,*' acquiring of hidden treasure and such things.—'*Kraya,*' obtaining things by purchase or exchange.—'*Jaya,*' in gambling or in battle.—'*Prayoga,*' investing money on interest.—'*Karmayoga,*' trade and agriculture.—The first three are common for all the four castes; '*Jaya*' is peculiar to the Kṣattriya; so are 'money-lending' and 'trade and agriculture' to the Vaishya; and 'rightful gift' to the Brāhmaṇa—(*Rāghavānanda.*)

This text describes the seven means of acquiring property, for the Brāhmaṇa in normal times.—'*Lawful,*' *i.e.*, permissible in normal times. '*Lābha,*' obtaining of hidden treasure.—'*Kraya,*' the purchase of lands and other things.—'*Jaya*' is victory over an opponent in debate.—'*Prayoga*' is teaching.—'*Karmayoga,*' officiating at sacrifices.—'*Satpratigraha*' is receiving gifts from pure twice-born persons.—(*Nandana.*)

'*Dāya*' is one's share in the father's property.—'*Lābha,*' obtaining of hidden treasure.—'*Jaya*' obtaining in war.—'*Prayoga,*' augmenting one's wealth by art, trade and such means.—'*Karmayoga,*' by means of arts and crafts.—(*Rāmachandra.*)

'*Prayoga,*' investing money for profit.—'*Karmayoga*' is officiating as a priest at sacrifices. The first three are lawful for all the four castes; '*Jaya*' is lawful for the Kṣattriya, and '*Prayoga*' for the Vaishya and also for the Shūdra; and '*Karmayoga*' for the Brāhmaṇa only.—(*Vīramitrodaya*, pp. 537-538.)

'*Dāya*' is what has come through relationship;—'*Lābha*' is finding of treasure-trove and such things;—'*Jaya*' is conquest of war;—'*Prayoga*' is money-lending on interest;—'*Karmayoga*' is trade and agriculture.—(*Smṛtitattva* II, pp. 350-351.)

'*Prayoga*' is monetary transaction for earning interest;—'*Karmayoga*' is officiating as priest at sacrifices.—(*Hemādri-Dāna*, p. 41.)

2. गौतम 10. 39—42.] स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु—ब्राह्मणस्याधिकं लब्धम्—क्षत्रियस्य विजितम्—निर्विष्टं वैश्यशूद्रयोः।

A man is an *owner* when there are Inheritance, Purchase, Partition, Finding and Trover;—in addition to this, there is Gift for the Brāhmaṇa,—Conquest for the Kṣattriya,—and Earning for the Vaishya and the Shūdra.—(Gautama, 10. 39—42.) [Quoted in *Aparārka*, p. 729; *Mitākṣarā*, pp. 314, 592 and 601; and *Parāsharamādhava*, p. 329.]

NOTES

'*Samvibhāga*,' 'Partition,' is here laid down as creating ownership.—(*Aparārka*, p. 729.)

'*Riktha*' is inheritance, direct and 'unobstructed';—'*Samvibhāga*' is inheritance, indirect, 'obstructed';—'*Parigraha*' is finding, in the forest and such places, of such things as wood, grass and the like not belonging to any person;—'*Adhigama*' is finding of treasure-trove and such things.—'*Labdha*' is an additional source of property peculiar for the Brāhmaṇa; what is acquired by possession or as 'wages' is peculiar for the Vaishya; and what is acquired by serving the twice-born is peculiar for the Shūdra.—(Bālambhaṭṭī on *Mitākṣarā*, pp. 314-315.)

The meaning is that one becomes the owner of property when the conditions enumerated here are present; the author has enumerated here the sources of property common to all men.—An additional source of property for the Brāhmaṇa is what is obtained by way of gifts; for the Shūdra, what is obtained by way of wages for serving the twice-born.—(Subodhini on *Mitākṣarā*, p. 315.)

This text implies that 'proprietary right' is something that can be indicated by the scriptures only; for if it were amenable to other means of knowledge, such texts as this would be absolutely futile.—(*Mitākṣarā*, pp. 592-593.)

The sources of property mentioned here are common to all men. '*Riktha*,' stands for 'unobstructed' or direct Inheritance;—'*Samvibhāga*' for 'obstructed' or indirect inheritance;—'*Parigraha*' is the obtaining of such water, grass and fuel and the like as have not belonged to any one else;—'*Adhigama*' is finding a treasure-trove and such things;—where these conditions are present, the man becomes the 'owner,' *i.e.*, he comes to be regarded as the 'owner' only when the said conditions are actually perceived to be present.—The source peculiar to the Brāhmaṇa is what he obtains by way of gift; this is in addition to those enumerated above;—the 'source' peculiar to the Kṣattriya is conquest, imposition of fines and so forth;—to the Vaishya, what is earned by agriculture, cattle-tending and so forth;—to the Shūdra, what is earned as wages for serving the twice-born. This last includes all those earnings that are made by people of the 'mixed' castes, for whom such professions have been prescribed as 'chariot-driving' for the *Sūta* and so forth.—(*Mitākṣarā*, pp. 601-602.)

'*Ownership*' being purely temporal, what this text does is to indicate that peculiar transcendental results accrue to the Brāhmaṇa if he restricts his acquisitions to 'gift' only,—to the *Kṣattriya* if he restricts it to conquest only and so forth.—(*Parāsharamādhava*, p. 329.)

3. सङ्ग्रहकार] न च स्वमुच्यते तद्यत् स्वेच्छया विनियुज्यते ।
विनियोगोऽपि सर्वस्य शास्त्रेणैव नियम्यते ॥

It cannot be right to assert that something is a person's *property* because he uses it as he wills; because the use of all property is controlled by the scripture.—(*Saṅgrahakāra*) [Quoted in *Smṛtichandrikā*, p. 601; *Vīramitrodaya*, p. 528.]

NOTES

The meaning of this text is as follows:—'Some people have held the view that it is not that whatever is found with a person is his *property*, but that it can be regarded as his *property* only when it is found that he is making use of it as he wills.—But this cannot be right; as the 'use' also of all kinds of property is controlled by the scriptures; so that there is nothing which a person may use *as he wills*.—(*Smṛtichandrikā*, p. 602.)

The first half of the verse raises a question which is answered in the second half.—(*Vīramitrodaya*, p. 528.)

4. सङ्ग्रहकार] विहितोऽर्थागमः शास्त्रे यथावर्णं [*v.l.*, यथावर्णि] पृथक् पृथक् ।
प्रतिग्रहास्त्रवाणिज्यशुश्रूषाद्यैर्यथाक्रमम् ॥

The source of property has been prescribed separately for each caste—as Gift, Weapon, Trade and Service respectively (for the Brāhmaṇa, Kṣattriya, Vaishya and Shūdra).—(*Saṅgrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 201; *Vīramitrodaya*, p. 527.)

NOTES

The scriptures have laid down separate means of acquiring property, for the several castes. There would be no ground for this, if ownership were purely temporal; and the said scriptures would in that case be futile.—(*Vīramitrodaya*, p. 527.)

NATURE OF OWNERSHIP

5. मनु 11. 193.] यद् गर्हितेनार्जयन्ति कर्मणा ब्राह्मणा (*v.l.*, मानवा) धनम् ।
तस्योत्सर्गेण शुध्यन्ति जप्येन (*v.l.*, दानेन) तपसैव च ॥

When Brāhmaṇas (*v.l.*, men) acquire property by an objectionable act, they become pure by giving it up, and also by repeating sacred texts (*v.l.*, making gifts) and performing austerities. (Manu, 11. 193.) [Quoted in *Mitākṣarā*, p. 603; *Vīramitrodaya*, p. 537.]

NOTES

'*Objectionable act*,' stands for the accepting of improper gifts.—'*Become pure*,'—the man becomes absolved from the sin of accepting the improper gift. *Giving it up*; unmindful of any spiritual or temporal benefits that might accrue from the relinquishment, he should deposit it on the public road, or he may throw it away into a river or a pit.—With the reading '*mānavāḥ*,' 'men,' the text means as follows: 'Any means of acquiring property that has been forbidden for a man is *objectionable* for him.'—(*Medhātithi.*)

If 'ownership' were to be determined by the scriptures alone, then, inasmuch as no 'objectionable means' would be enjoined by the scriptures, there would be no 'ownership' over things acquired by those means; so that there being no ownership of the acquirer, there could be no partition of such property by his sons; on the other hand, if 'ownership' is temporal, it would be present also in the case of property acquired by objectionable means, and hence partition would be possible. The 'sin' attaching to the acquisition would affect only the original acquirer, not his heirs, whose ownership would be based on 'Inheritance,' which is one of the seven *lawful* means of acquiring property.—(*Mitākṣarā*, p. 603.)

If 'ownership' rested solely on the scriptures, there would be no ownership over property acquired by objectionable means; just as there is none over what is obtained by theft.—(*Vīramitrodaya*, p. 537.)

6. मनु 8. 340.] योऽदत्तादायिनो हस्तात् लिप्सेत ब्राह्मणो धनम् ।
याजनाध्यापनेनापि यथा स्तेनस्तथैव सः ॥

If a Brāhmaṇa seeks, even by sacrificing and teaching, to obtain wealth from one who has taken what has not been given to him,—he is just like a thief.—(Manu, 8. 340.) [Quoted in *Mitākṣarā*, p. 593; *Parāsharamādhava*, p. 328; *Vīramitrodayā*, p. 527.]

NOTES

This text prescribes a penalty for the Brāhmaṇa who obtains wealth—even by the lawful methods of sacrificing and teaching—from a person who has misappropriated things. There would be no logical basis for such a penalty if 'ownership' were purely temporal;—so say those who regard 'ownership' to be based upon scriptures entirely.—(*Mitākṣarā*, p. 593.)

7. गौतम] उत्पत्त्यैवार्थस्वामित्वं लभेतेत्याचार्याः ।

By one's birth itself one acquires ownership over property,—so declare the Teachers.—(Gautama.) [Quoted in *Mitākṣarā*, p. 608; *Smṛtitattva* II, p. 162.]

NOTES

This text lends support to the view that ownership of the son and others is established by their very birth.—(*Mitākṣarā*, p. 608.)

What is meant is that when the father's ownership has ceased, the ownership of his sons, in preference to other relatives, follows from the mere fact of their having been born out of his body; and hence it is the sons that receive his property, and not other relatives. It cannot be taken to mean that as soon as the son is born, the mere fact of his birth establishes his ownership, even while the father is alive and his ownership is intact.—(*Smṛtitattva* II, p. 162.)

8. सङ्ग्रहकार] वर्तते यस्य यद् हस्ते तस्य स्वामी स एव न ।
अन्यस्वमन्यहस्तेषु चौर्याद्यैः किन्न विद्यते ।
तस्माच्छास्त्रत एव स्यात् स्वाम्यं नानुभवादपि ।

A man is not necessarily the owner of all that is in his hands; do not we see property belonging to one going to the hands of others, through theft and such other means? For this reason, "ownership" should rest only on the scriptures, and not on any other means of knowledge.—(*Saṅgrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 600; *Vīramitrodaya*, p. 527; *Parāsharamādhava*, p. 328.]

NOTES

The argument set forth in this text is in support of the view that ownership is scriptural, not temporal.—(*Smṛtichandrikā*, p. 601; *Parāsharamādhava*, p. 328.)

WHAT IS 'DĀYA'

9. संग्रहकार] पितृद्वारागतं द्रव्यं मातृद्वारागतं च यत् ।
कथितं दायशब्देन ।

What has come to one through the father, and through the mother, is expressed by the term '*Dāya*'—(*Saṅgrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 598; *Vyavahāramayūkha*, p. 93; *Parāsharamādhava*, p. 326.]

NOTES

What is meant is the *property* that devolves upon one through one's father and mother.—(*Parāsharamādhava.*)

10. निघण्टु] विभक्तव्यं पितृद्रव्यं दायमाहुर्मनीषिणः ।

The wise have called that property '*Dāya,*' which belonged to the father and comes to be partitioned.—(*Nighaṇṭu.*) [Quoted in *Smṛtichandrikā*, p. 597 ; and *Vyavahāramayūkha*, p. 93.]

NOTES

The meaning is that the name '*dāya*' has been applied to that property which, having devolved from the father and other relatives, comes to be partitioned.—(*Smṛtichandrikā.*)

11. नारद 16.1.] विभागोऽर्थस्य पित्र्यस्य [*v.l.*, पित्रादेः] पुत्रैर्यत्र प्रकल्प्यते ।
दायभाग इति प्रोक्तं व्यवहारपदं बुधैः ।

When there is partition by the sons of their paternal property [*v.l.*, property that belonged to their father or others], it is the 'topic of law' called *partition of inheritance.*—(Nārada, 16. 1.) [Quoted in *Dāyabhāga*, p. 2 ; *Vyavahāramayūkha*, p. 94 ; *Dāyanirṇaya*, 1. 1—5.]

NOTES

'*Paternal property*'—that property over which the ownership of the sons has come about by reason of the father's death. The two terms 'sons' and 'paternal' are merely illustrative, indicating *relationship in general ;* because the term 'partition of inheritance' is applied to all cases where there is a partition, among relatives, of property coming from any relatives.—(*Dāyabhāga*, p. 2.)

'*Sons.*'—This term includes the grandson and others also ; and the term '*parental*' includes the grandfather and others ;—in fact the *Madanaratna* reads '*pitrādeḥ*' (of the father and others) for '*pitryasya*' (paternal).—(*Vyavahāramayūkha*, p. 94.)

When the ownership of the previous owner over a property has ceased—by reason of his death and such other causes,—and the ownership of his relatives comes about,—this is what is called '*Dāya,*' 'inheritance.'—(*Dāyanirṇaya*, 1. 1—7.)

Section 1 (b)

WHO ARE ENTITLED TO PARTITION?

12. बौधायन] सत्स्वङ्गजेषु तद्गाम्यर्थो भवति ।

When there are persons born of the body, the property goes to them.—(Baudhāyana.) [Quoted in *Smṛtitattva* II, p. 162.]

NOTES

The meaning is that on the cessation of the ownership of the father, if there are sons, the property over which that ownership extended devolves upon the sons.—(*Smṛtitattva* II, p. 162.)

13. मनु] अविभक्ता विभक्ता वा सपिण्डाः स्थावरे समाः ।
एको ह्यनीशः सर्वत्र दानाधमनविक्रये ॥

Divided or undivided, all Sapiṇḍas stand on an equal footing in regard to immovable property. No one individual among them has the power to give away, or mortgage or sell it.—(Attributed to Manu by *Mitākṣarā*, p. 612.)

NOTES

This should be explained as follows :—So long as the property has not been partitioned, it belongs to all and no one individual has the sole right over it; hence the consent of all is necessary. After it has been partitioned, the consent of all co-parceners would be required,—not because the single individual to whose share it has fallen, has no sole right over it, but only for the purpose of setting aside all doubts as to its having been partitioned; as this would facilitate business. For this reason in regard to partitioned property, the business (of giving, mortgaging and selling) could be done even without the consent of all the co-parceners.—(*Mitākṣarā*.)

14. मनु] ये जाता येऽप्यजाता वा ये च गर्भे व्यवस्थिताः ।
वृत्तिं तेऽपि हि काङ्क्षन्ति वृत्तिलोपो विगर्हितः ॥

Those that are born, those that are unborn, those that are in the womb,—all these require livelihood; the deprival

of livelihood has been condemned.—(Attributed to Manu in *Dāyabhāga*, p. 42.) [Quoted in *Mitākṣarā*, p. 611 ; *Parāsharamādhava*, p. 332 ; *Vīramitrodaya*, pp. 532 and 553 ; *Smṛtitattva* II, p. 177 ; *Vibhāgasāra*, 18. 2–7.]

NOTES

This is meant to indicate that in regard to the disposal of immovable property,—self-acquired as well as ancestral,—the father is not entirely independent ; he has to obtain the consent of his sons.—(*Mitākṣarā.*)

In the disposal of immovable property,—ancestral as well as self-acquired,—the father is dependent upon the consent of his sons and the rest.—(*Parāsharamādhava*, p. 332 ; *Vīramitrodaya*, p. 532.)

The ancestral property shall not be partitioned until the mother has become unable to bear more children ; for if children were to be born after partition, they would have to go without property and thus their livelihood should suffer.—(*Vīramitrodaya*, p. 553 ; *Dāyabhāga*, p. 24.)

The exception to this occurs in the text—'*Ekopi sthāvare kuryāt*, etc. (see below.)

15. कात्यायन] बन्धूनामविभक्तानां भोगं नैव प्रदापयेत् ।

Among undivided relatives, no one shall be required to make good what he has enjoyed.—(*Kātyāyana.*) [Quoted in *Smṛtitattva* II, p. 164 ; *Vīramitrodaya*, p. 548 ; *Vibhāgasāra*, 12. 1–8.]

NOTES

[See Ch. V, Sec. 6.]

The coparcener in whose possession the property has been shall not be made to make good what he has enjoyed.—(*Vibhāgasāra*, 12. 1—9.)

16. मनु 8. 416.] भार्या पुत्रश्च दासश्च त्रय एवाधनाः स्मृताः ।
महाभारत-उद्योग 33. 64.] यत् ते समधिगच्छन्ति यस्य ते तस्य तद् धनम् ॥

The wife, the son and the slave have been declared to be without property ; whatever they acquire belongs to the man to whom they (themselves) belong.—(Manu, 8. 416 ; Mahābhārata-udyoga, 33. 64.) [Quoted in *Smṛtichandrikā*, p. 653; *Vīramitrodaya*, p. 525 ; *Vyavahāramayūkha*, p. 154 ; *Smṛtitattva* II, p. 180.)

NOTES

[See Ch. II, 20, & III, 39.]

These three are 'without property,' even though they may acquire property. Property can belong only to one who has *ownership* or *possession*;

while whatever property the said three persons acquire is *owned* or *possessed* by him to whom they themselves belong; so that the property of the wife belongs to the husband; that of the son, to the father; and that of the slave to the master.—All that is meant is that the said persons are dependent, subservient; that the wife should not employ her property for any purpose except with the sanction of the husband, nor the son without the sanction of the father, nor the slave without the sanction of the master.—According to others all that the text means is that in times of distress the Master may take what belongs to his slave, just as he can what belongs to his wife or son.—(*Medhātithi.*)

These have no property, because what they acquire belongs to him to whom they belong; mere *dependence* is what is here emphasised.—(*Govindarāja.*)

'*Acquire*'—even by serving others.—(*Sarvajñanārāyaṇa.*)

This is meant only to indicate the fact that the three are not independent. The literal meaning cannot be accepted; (1) as Manu himself is going to enumerate the six kinds of '*strīdhana*'; - (2) because even for the woman, the son and the slave, there have been enjoined certain religious acts which can be performed only with the help of wealth;—(3) because the texts have declared the fact of the wife being entitled to the performance of sacrifices, which performance is done by her through the consent that she accords to its being performed by her husband with the help of her own property.—(*Kullūka.*)

While emphasising the property-lessness of the slave, the author says the same with regard to the wife and the son also. What is meant is that the wife is not entitled to spend without the husband's permission, the son without the father's permission and the slave without the master's permission; specially by reason of the declaration that 'they have no authority while the parents are alive'; and the ownership of the son comes only after the father's death. As for the 'ownership' of the wife, it has been definitely asserted by those texts that speak of the six kinds of *strīdhana*; as also by the declaration that 'property is common between husband and wife';—yet we have also the declaration that 'woman does not deserve to be independent'; similarly with regard to the slave, his ownership has been asserted in those texts that declare that the slave may make a living by means of arts and crafts;—and yet we have the prohibition that 'the slave shall not amass wealth.' From all this it follows that the three have no independence.—(*Rāghavānanda.*)

The meaning is that while the husband, the father and the master are alive, the wife, the son and the slave respectively have no property; they have property only on the death of the husband, etc.—(*Nandana.*)

'*Acquire*'—obtain.—(*Rāmachandra.*)

This does not mean that the wife is really without property; all that is meant is that in the matter of spending, she is not entirely free; that with the permission of the person 'to whom they belong' the wife, the son and the slave can make use of their property.—(*Smṛtichandrikā*, pp. 653-654.)

This text has been taken as emphasising the fact of the wife and the rest being *dependent, subordinate.*—(*Vīramitrodaya*, p. 525.)

This refers to such property as has been acquired by means of arts and crafts; it also means that in the matter of her dowry and other kinds of

property also, the wife is not free; as has been declared by Manu himself (9. 199):—'Women shall never make a withdrawal out of the family-property which is common to many, *nor out of their own property, without the husbands' permission.*'—(*Vyavahāramayūkha*, p. 154.)

In view of the second line this text can only mean that it is *only in regard to what has been acquired by the wife, the son and the slave,* themselves, that they cannot do what they like,—without the permission of the husband, the father or the master.—(*Smṛtitattva* II, p. 180.)

Section 1 (c)

TIME OF PARTITION

17. मनु 9. 104.] ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम्।
[v.l.—(a) स्वयम्, (b) सह]
भजेरन् पैतृकं रिक्थम्, अनीशास्ते हि जीवतोः॥

After the death of the father and of the mother, the brothers, having come together, shall divide equally [v.l., among themselves] the parental property ; while the parents are alive, they have no power.—(Manu, 9.104.) [Quoted in *Smṛtichandrikā*, p. 598 ; *Vivādaratnākara*, p. 455 ; *Vivādachintāmaṇi*, p. 193 ; *Dāyabhāga*, pp. 11, 16, 28, 58 ; *Vyavahāramayūkha*, p. 94; *Vīramitrodaya*, pp. 525, 550.]

NOTES

'*Shall divide.*'—This term is meant to denote the propriety of dividing.—(*Medhātithi.*)

'*Paitṛkam.*'—The term '*pitarau*' stands for both Father and Mother ; hence '*paitṛkam*' means *parental.*—'*Ūrdhvam*'—after death.– The father's property should be divided after the father's death, and the mother's property after the mother's death,—such being found to be the view of other Smṛtis. But as regards the mother's property, the sons are to receive it only if there are no daughters.—'*Sametya,*'—coming together.—'*Samam,*'—*i.e.*, in the division of the parental property there should be no distinction among the sons.—'*Anīshāḥ*'— they are not free to divide the property ; this implies that even during the lifetime of the parents, the property may be divided with their permission.—(*Sarvajñanārāyaṇa.*)

The brothers, coming together, should divide, in equal shares, the father's property after the father's death, and the mother's property after the mother's death. In view of the text later on laying down an 'additional portion' for the eldest brother, the present declaration of 'equality' of the division should be understood as referring to cases where the eldest brother does not desire to have the 'additional portion.' The reason why the division is to be done after the death of the parents is stated to be that during the lifetime of the parents the sons are not owners of the parental property.—The term '*paitṛka*' includes the *mother's* property also.—If the father so wishes, the division of his property may be made even during his lifetime ; as has been said by Yājñavalkya.—'If the father makes the division, he should divide the sons according to his wish.'—(*Kullūka.*)

'*Ūrdhvam*'—after the death,—of the father and mother.—The reason is that while the parents are alive, 'they have no power.' The death of the parents is productive, as well as indicative, of ownership in the sons. The term 'after the death' indicates also such circumstances as *becoming outcast* or *going out as wandering mendicant* and the like; these latter being as destructive of ownership as Death itself.—'*Samam*,' in equal shares; this also, only when the father wishes it so; because in view of the declaration of Yājñavalkya—'If the father makes the division, he may divide the sons in accordance with his wish: he may give a superior portion to the eldest brother or all may have equal sharers'—the determining factor is the father's wish, not seniority or such other conditions.—(*Rāghavānanda.*)

'*Sametya*' coming together.—'*Paitṛkam*' belonging to the father.—They should divide the father's property after the father's death and the mother's property after the mother's death.—(*Nandana.*)

'*After the death of the father.*'—This indicates the time for dividing the father's property.—'*After the death of the mother.*'—This indicates the time for dividing the mother's property. Hence it follows that even while the mother is living, the father's property may be divided; similarly, on the mother's death, even though the father may be living, the mother's property may be divided; there being no point in waiting for the death of both for the dividing of the property of either one of them. This naturally implies that the father's property cannot be divided while the father is living, nor the mother's property while the mother is living.— (*Smṛtichandrikā*, p. 598).

'*Equally*,'—that is, there is no setting apart of the twentieth part (for the eldest brother). This may be said to be inconsistent with what Manu has himself declared regarding the 'twentieth part' for the eldest brother. But in reality there is no inconsistency; as this declaration refers to very special cases, where the eldest brother may be possessed of exceptionally good qualities.—Udayakara has explained the meaning of the present special text to be that the 'equal' division is meant to be made of the property *after* its 'twentieth part' has been set aside for the eldest brother.—*Halāyudha* and *Pārijāta* have read '*saha*' in place of '*samam*' and *Pārijāta* has explained it as 'among themselves.'—'*Paitṛkam*,'—this includes the mother's property also, says *Halāyudha*. Though the term used is '*Paitṛkam*' (parental or paternal), yet the property of the grandfather and the like also is meant to be included; as 'property acquired by the grandfather' has also been declared to be what should be partitioned;—such is the view of others. As a matter of fact, both of these—the mother's property and the grandfather's property—are meant to be included; but in regard to themother's property, its partition among the sons should be possible only if she has left no daughter or daughter's offsprings.—(*Vivādaratnākara*, p. 455.)

'*Equally*,'—*i.e.*, there is no setting apart of the 'twentieth part.' Nor is this inconsistent with what Manu has said regarding the setting apart of the twentieth part for the eldest brother in cases of partition after the father's death.—Because this latter is meant for those special cases where the eldest brother is possessed of exceptionally good qualities, or where the eldest brother is specially desirous of having the additional twentieth part.—'*After the*

mother'—this has been added because the term '*paitṛkam*' means *parental* and hence the 'mother's death' would be a condition for the partitioning of the mother's property.—(*Vivādachintāmaṇi*, p. 193.)

This text puts out of court the view that ownership is created by birth itself. Because the only possible reason for the sons not being able to divide the parental property while the parents are living is that during the parents' lifetime, the sons have no 'ownership' over the property. (*Dāyabhāga*, p. 11.)—This text indicates the fact of the ownership of the sons coming into existence only on the death of the parents.—(*Ibid.*, p. 16.)—During the father's lifetime, there can be no partition, except at the wish of the father.—(*Ibid.*, p. 28.)—After the death of the father, even though the sons have acquired ownership over the property, it is not right for the brothers to divide the property among themselves while their mother is living; it is only on the death of both father and mother that the father's property should be divided by the brothers among themselves. There is no ground for taking the term '*paitṛkam*' as standing for the property of both parents, and for taking the text to mean that the father's property is to be divided after the father's death and the mother's property after the mother's death. That the mother's property is to be divided after the mother's death is declared by Manu in another text (9. 192).—(*Ibid.*, p. 58.)

Even though the particle '*cha*' is there, the death of both parents is not meant (to be necessary for the division of the father's property); as the *Saṅgrahakāra* (see below) has definitely declared that—'the father's property may be divided even while the mother is living, since the mother, apart from her husband, has no ownership over the property'; similarly the mother's property may be divided even while the father is living; because so long as the woman's children are there, her husband has no ownership over her property.—(*Vyavahāramayūkha*, p. 94.)

This clearly declares that the sons have no ownership over the property of the parents while these latter are alive.—(*Vīramitrodaya*, p. 525.)—'*Paitṛkam*,' 'parental,' belonging to the two parents; hence what is meant is that the time for dividing the father's property is after the father's death, and that for dividing the mother's property, after the mother's death. The particle '*cha*' only indicates the possibility of other times; it does not mean that both the parents should die before the property is divided; because the fact of the mother being alive is no bar to the dividing of the father's property; nor is the fact of the father being alive a bar to the dividing of the mother's property.—The assertion that '*they have no power*' only means that they are not free to do what they like, and not that they have no ownership; because the ownership of the sons over their father's property comes with their birth.—(*Ibid.*, p. 550.)

For other notes see Chapter II, 253.

18. गौतम 28. 1-2.] ऊर्ध्वं पितुः पुत्रा रिक्थं भजेरन्—निवृत्ते रजसि मातुः जीवति चेच्छति च ।

After the father's death, the sons shall divide his property ;—or during his lifetime, if he so desires it, after the mother is past child-bearing.—(Gautama, 28.1-2.) [Quoted in *Vivādaratnākara*, p. 463 ; *Dāyabhāga*, p. 28 ; *Vīramitrodaya*, p. 552 ; *Dāyanirṇaya*, 17. 2—5.]

NOTES

All these texts unequivocally indicate that while the father is alive, the sons have no ownership over any property, and also that the partition of the property, if made, would depend upon his wish;—this applies not only to the father's own property, but also to the grandfather's (ancestral) property.—(*Dāyabhāga*, pp. 28-29.)

The term 'mother' includes the *step-mother* also. The meaning is that even though the mother or the step-mother may *not* be past child-bearing, yet, if there is no possibility of any more sons being born, on account of the father having become an invalid,—the ancestral property is to be partitioned, if the father wishes it so.—(*Dāyanirṇaya*, 17. 2—6.)

19. नारद 13. 3.] मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च ।
निवृत्ते वाऽपि रमणे [*v.l.*, विनष्टे वाप्यशरणे] पितर्युपरतस्पृहे
[दायविभागः स्यात्] ।

Division of the property shall take place when the mother has ceased to menstruate and the sisters have been given away in marriage, or when sexual intercourse has ceased [*v.l.*, when the husband has become an outcast or turned a wandering mendicant] and the father has ceased to have any desires.—(Nārada, 13. 3.) [Quoted in *Vivādaratnākara*, p. 462 ; *Dāyabhāga*, pp. 18, 24 ; *Vivādachintāmaṇi*, p. 195 ; *Smṛtichandrikā*, p. 605 ; *Vyavahāramayūkha*, p. 95 ; *Madanapārijāta*, p. 647 ; *Vivādachandra*, 19. 2—4.]

NOTES

'*Prattāsu*'—married.—'*Nivṛttē ramaṇē*,' the capacity for sexual intercourse having ceased.—'*Uparatasprhē*,' having got rid of all desire for objects of sense.—In the *Prakāsha*, in place of '*nivṛttē ramaṇē*,' two other readings have been accepted : '*nirapēkṣē ramaṇē*' (the husband having become indifferent) and '*nirastē chāpi ramaṇē*,' (sexual intercourse having been given up) ; and Halāyudha has adopted the reading '*ramaṇāt*' (after the husband has desisted from sexual intercourse) ; but none of these readings makes any difference in the sense.—(*Vivādaratnākara*, p. 462.)

'*Vinaṣṭē*' (*v.l.*, for '*nivṛtte*')—becoming an outcast;—'*asharaṇē* (*v.l.*, for '*ramaṇe*')—gone out of the householder's state.—If we adopt the reading '*nivṛtte vāpi maraṇāt*,' the meaning would be 'the father having receded from death, *i.e.*, being alive, but free from all desires.' Here also the implication is that the fact of the father being free from all desires brings about the ownership of the sons over the father's property; and so this also would be a time for partition.—(*Dāyabhāga*, pp. 18-19.) -This refers to property coming down from the grandfather and other ancestors.—When menstruation has ceased, there is no possibility of any other sons being born; so that at that time also there would be partition among the sons only if the father wishes it. If the ancestral property were divided before the mother had ceased to menstruate, those sons that would be born after the partition would be deprived of the means of subsistence; and this would be highly improper.—(*Ibid.*, p. 24.)

'*Prattāsu*,' married.—'*Ramaṇē*,' the father's capacity for sexual intercourse.—'*Uparataspṛhē*,' being devoid of all desire for sense-objects. —(*Vivādachintāmaṇi*, p. 195.)

The sense is that the sons shall divide the father's property (*a*) when it has become definitely certain that the parents have become devoid of the capacity of begetting children, (*b*) when the marriage of the female children has been performed, and (*c*) when the father has lost all desire for possessions.—(*Smṛtichandrikā*, p. 605.)

'*Ramaṇa*' stands for *sexual desire*;—'*uparataspṛha*' means 'free from attachment.'—'*The sisters being married*' is to be construed with 'cessation of mother's menstruation,' as also with 'the cessation of sexual intercourse'; [*i.e.*, provision for the marriage of sisters must precede a division which takes place when the mother is past child-bearing, as also when it takes place on the father being devoid of sexual desire].—(*Vyavahāramayūkha*, p. 95.)

'*Prattāsū*,' married.—'*Ramaṇa*' is intercourse with women;—the meaning is that 'when there is no desire for intercourse with women.'—'*Spṛhā*' —for wealth.—(*Madanapārijāta*, p. 647.)

This verse commends partition at the time stated. The meaning is that 'when the mother has ceased to menstruate, and the father has become devoid of all desires,—even though he may not have accorded his consent,—such consent should be obtained by the sons somehow and the partition of the property made.'—(*Vivādachandra*, 19. 2-4.)

20. नारद 13. 2.] पितर्यूर्ध्वं गते पुत्रा विभजेयुर्धनं पितुः ।
मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयः ॥

After the father has died, the sons shall divide their father's property; and the daughters shall divide the mother's property; if the daughters are not alive, then their offspring.—(Nārada, 13. 2.) [Quoted in *Vivādaratnākara*, p. 456; *Vivādachintāmaṇi*, p. 194; *Dāyabhāga*, p. 11.]

NOTES

The phrase '*pitaryūrdhvaṃ gate*' (after the father has died) suffices to indicate that the property is to be divided *by the sons*, the addition of the word '*putrāḥ*' (sons) is for the purpose of indicating that all kinds of sons—even the *Kṣetraja* and the like—are meant to be included. So that what the text means is that if any of the twelve kinds of sons is there, no one else is entitled to the property.—'*Pituḥ*' (of the father) is meant to show that if there is any property acquired by any of the brothers through learning and such other means, that is not to be divided along with the father's property.—The daughters shall divide the mother's property;—if there are no daughters living, then their offspring shall divide it; the pronoun '*tat*' (their) in the compound '*tadanvayaḥ*' (their offspring) must refer to the 'daughters,' which is the noun nearest to it. Such also is the opinion of *Lakṣmīdhara*. The *Prakāsha* and the *Pārijāta* have explained '*tadanvayaḥ*' as '*the son, grandson* and so forth of the daughter' [*i.e.*, the daughter's *male* issue only, not the female issue].—(*Vivādaratnākara*, p. 456.)

The meaning may be taken to mean that the persons entitled to inherit the mother's property are the *daughters*, and in the absence of these, the *daughters' sons*; so that the son has no title to it.—But this would not be right; as there is nothing in the text to show that any one is meant to be excluded.—(*Vivādachintāmaṇi*, p. 194.)

The text may be taken to mean that before they partition the property, the sons have no ownership over it, and yet the partition could not be the source of the ownership.—But the answer to this is that, inasmuch as it is only after the death of the father that the sons speak of the property as their 'own,' it is the death of the father that is to be regarded as the source of their ownership.—(*Dāyabhāga*, p. 11.)

21. देवल] पितर्युपरते पुत्रा विभजेयुर्धनं पितुः ।
अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते ॥

On the father's death, the sons shall divide the father's property; there would be no ownership for the sons so long as the blemishless father is alive.—(Devala.) [Quoted in *Smṛtichandrikā*, p. 600; *Vivādaratnākara*, p. 456; *Dāyabhāga*, pp. 13, 28; *Vīramitrodaya*, p. 524; *Smṛtitattva* II, p. 162; *Vyavahāramayūkha*, p. 90; *Dāyanirṇaya*, 1. 1—9.]

NOTES

The 'absence of ownership' here spoken of should be taken to mean only that *they are not free to do what they like* [and not that they have no ownership at all]; because the ownership of the sons over their father's property has been accepted in ordinary practice as having come to them by their very birth.—(*Smṛtichandrikā*.)

'*Blemishless*,'—free from such defects as 'being an outcast' and the like.—(*Vivādaratnākara.*)

Devala here clearly declares the 'absence of ownership' over the father's property.—(*Dāyabhāga.*)

By the second half of the verse, Devala has clearly asserted the sons' 'absence of ownership' over the father's property, during the lifetime of the latter,—as a reason why the partition is to be done after his death.—'Blemishless,' free from such faults as being an 'outcast' and the like, which have been declared to be destructive of all rights.—(*Vīramitrodaya.*)

The view that "even while the father is living and his ownership is intact, the ownership of the sons is also there, having been brought about by their very birth" is set aside by this text.—'*Blemishless*,' *i.e.*, not an outcast.—(*Smṛtitattva* II.)

The first half of the verse enjoins the time for partition, and what the second half asserts is only in commendation of that injunction, and it only means that the sons are not free to do what they like with the property,—and *not* that their ownership is not there at all.—(*Vyavahāramayūkha.*)

'*Blemishless*,'—*i.e.*, free from such disabilities as *being an outcast* and so forth;—'*father's property*,'—*i.e.*, the property that belonged to the father during his lifetime; or the term '*pituḥ*' (father's) may mean *that which has been obtained from the father.*—According to *Mishra* what happens is that on the death of the father, the ownership of all his heirs appears over the entire property left by the father; when the 'partition' takes place, this *common ownership* of all the heirs over the entire property is set aside, and the ownership of each one of them over a particular part of the property is brought about. This is the right view.—(*Dāyanirṇaya*, 2. 1. 1, *et seq.*)

22. बौधायन 2. 3—8.] पितुरनुमत्या दायविभागः ।

The division of the property is to be done with the father's permission.—(Baudhāyana, 2. 3—8.) [Quoted in *Vivādaratnākara*, p. 463; *Vivādachandra*, 19. 2-3; *Dāyabhāga*, p. 28.]

NOTES

The meaning is that during the father's lifetime there can be no partition of property without his permission.—(*Vivādachandra*, 19. 2-3.)

The implication of this is that the sons have no ownership over the property during the father's lifetime.—(*Dāyabhāga*, p. 29.)

23. शङ्ख] अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणि
or हारीत] वा [*v. l.*, च] ।

Even though the father be unwilling, the property is to be partitioned, if he is too old or of perverted mind or (*v.l.*, and) an invalid.'—(*Shaṅkha* or *Hārīta.*) [Quoted in

Mitākṣarā, p. 617 ; *Madanapārijāta*, p. 647 ; *Aparārka*, p. 718 ; *Vivādachintāmaṇi*, p. 194 ; *Vyavahāramayūkha*, p. 96.]

NOTES

Even though the mother may not be past child-bearing, even if the father be unwilling,—if he happen to be unrighteous in his conduct or attacked by a protracted disease, -the property may be partitioned by the sons, if they so wish.—(*Mitākṣarā*, pp. 617-618.)

[' Protracted '—*i.e.*, incurable ; '*cha*' is meant to include advanced age also.—'*unrighteous*'—this is what ' perverted mind ' means; '*vā*'—the meaning is that any of the disabilities of the father entitles the sons to partition the property.—(*Bālambhaṭṭī*.)]

'*Of perverted mind,*' *i.e.*, unrighteous in conduct. -(*Madanapārijāta*, p. 647.)

'*Of perverted mind,*' *i.e.*, with mind diverted or disgusted. In the event of the father being fit,—and not in any way disabled—there can be partition only with his permission.—(*Vivādachintāmaṇi*, p. 194.)

'*Akāme*,—*i.e.*, not having the desire to divide the property (says the *Madanaratna*).—'*of perverted mind*'—*i.e.*, unrighteous in conduct. The meaning is that there can be partition even when the father is unwilling.—(*Vyavahāramayūkha*, p. 96.)

24. (?)] जीवतोरस्वतन्त्रः स्याज्जरयापि समन्वितः ।

While the parents are alive, the son is not independent even though he may have become old. (?) [Quoted in *Mitākṣarā*, p. 648.]

NOTES

This 'absence of independence' pertains to such property as has been acquired by the father and the mother.—(*Mitākṣarā*, p. 648.)

25. अर्थशास्त्र II, p. 31.] अनीश्वराः पितृमन्तः स्थितपितृमातृकाः पुत्राः ।
तेषामूर्ध्वं दायविभागः पितृद्रव्याणाम् ॥

Those who have their fathers, those whose father and mother are alive,—have no power. It is only after the death of the parents that there can be partition of the inheritance in the shape of the father's property.—(*Arthashāstra* II, p. 31.)

26. बृहस्पति 25. 1.] पित्रोरभावे भ्रातृणां विभागः सम्प्रदर्शितः ।
मातुर्निवृत्ते रजसि जीवतोरपि शस्यते ॥

After the death of both parents, division (of property) among brothers has been ordained; it has been permitted also during their lifetime, if the mother is past child-bearing.—(Bṛhaspati, 25. 1.) [Quoted in *Dāyabhāga*, pp. 26—60; *Vīramitrodaya*, p. 552; *Vyavahāramayūkha*, p. 94.]

NOTES

This refers to the division of the grandfather's property; and not to the father's (self-acquired) property. Nor can it refer to the mother's property; for, if the mother's property were to be divided by the sons among themselves, she would be left without any property. Hence the whole text must refer to the grandfather's property.—(*Dāyabhāga*, p. 26.)—While even one of the parents is alive, partition would not be right; it would be right only on the death of both parents. When the mother is past child-bearing, but is alive, there could be no partition of her property; the partition among the brothers here spoken of, therefore, must refer to the father's property.—(*Ibid.*, p. 60.)

This is a denial of the view that 'Father's property may be divided during the mother's lifetime, and mother's property during the father's lifetime' (see quotation from *Saṅgrahakāra* below).—(*Vyavahāramayūkha*, p. 94.)

27. संग्रहकार] पितृद्रव्यविभागः स्यात् जीवन्त्यामपि मातरि ।
स्मृतिसंग्रह] न स्वतन्त्रतया स्वाम्यं यस्मान्मातुः पतिं विना ।
मातृद्रव्यविभागोऽपि तथा पितरि जीवति ।
सत्स्वपत्येषु यस्माच्च स्त्रीधनस्य पतिः पतिः ॥

The property of the father may be divided even while the mother is alive; as the mother, by herself, apart from her husband, has no ownership.—The property of the mother also may be divided while the father is alive; as, so long as her children are there, the husband has no ownership over the woman's property.—(*Saṅgrahakāra*, *Smṛtisangraha.*) [Quoted in *Smṛtichandrikā*, p. 599; *Parāsharamādhava*, p. 327; *Vīramitrodaya*, p. 551; *Vyavahāramayūkha*, p. 94.]

NOTES

This implies that the property of the father shall not be divided by the sons while the father is alive; nor the mother's property while the mother is alive.—(*Smṛtichandrikā*, p. 599.)

After the death of her husband, the wife has no ownership over his property; after the death of the wife, the husband has no ownership over the wife's property so long as she has any children; hence it is only right that even

during the mother's lifetime, the father's property should be partitioned, *vice versa*.—(*Parāsharamādhava*, p. 327.)

On the death of the husband, while the sons are there, the wife has no ownership over her husband's property; hence even during her lifetime, the sons may divide their father's property. Similarly, while her children are there, the husband has no ownership over his wife's property; hence even during the father's lifetime, the sons are entitled to divide their mother's property.—(*Vīramitrodaya*, p. 551.)

28. शङ्खलिखित] अत ऊर्ध्वं रिक्थविभागः। न जीवति पितरि पुत्रा
रिक्थं भजेरन्। यद्यपि स्यात् पश्चादधिगतं तैः—अनर्हा
एव पुत्राः अर्थधर्मयोरस्वातन्त्र्यात् पितरि निर्दोषे।

After this the division of property. While the father is living, the sons shall not divide the property,—even that which may have been acquired by them subsequently; while the father is alive and free from blemish, the sons have no independent concern with wealth and spiritual merit.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 456; *Aparārka*, p. 718; *Vyavahāramayūkha*, p. 90.]

NOTES

'*Acquired subsequently*,'—*i.e.*, acquired conjointly by the capable sons, independently of the father, by learning and other means.—(*Vivādaratnākara*, p. 456.)

'*Na jīvati, etc.*, prohibits partition during the father's lifetime; what follows is only a declamatory declaration in support of that prohibition; the meaning being simply that during the father's lifetime, the sons are not free to do what they like.—'*Taiḥ*,' by the sons.—'*Pashchāt*,' *i.e.*, after their birth.—'*Acquired*,' by means of gifts and other sources.—Thus the sense of the passage is that—'When with their own self-acquired property the sons are not free to do what they like, during the father's lifetime, how much more would it be so in regard to the property of their father himself?' This absence of freedom is with regard to partition, the performance of rites calculated to bring rewards, carrying on business and such acts.—(*Vyavahāramayūkha.*)

29. कात्यायन] सम्प्राप्तव्यवहाराणां विभागश्च विधीयते।
पुंसां च षोडशे वर्षे जायते व्यवहारिता॥

Partition has been ordained for those who have obtained majority; by males, majority is attained in the sixteenth

year.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 722; and *Vivādachandra*, 20. 1—10.]

NOTES

'*Attaining of majority*' has been mentioned only by way of illustration; '*learning of the Veda*' also is a necessary condition.—(*Aparārka*, p. 722.)

There can be no partition with minors; nor can there be 'reunion' with them; as partition is a necessary antecedent to 'reunion.'—(*Vivādachandra*, 2. 1—10.)

30. हारीत] यद्यसमाप्तवेदाः कनीयांसस्तदा सह वसेयुः ।

If the younger brothers have not completed their study of the Vedas, they should live together.—(*Hārīta.*) [Quoted in *Aparārka*, p. 722.]

NOTES

What is meant is that just as there should be no partition among brothers before all of them have attained majority,—so also before they have all completed their Vedic study.—(*Aparārka.*)

31. हारीत] जीवति पितरि पुत्राणामर्थादानविसर्गाक्षेपेषु न स्वातन्त्र्यम् ।

While the father is living, the sons have no freedom in regard to the appropriating, giving away or realising property.—(*Hārīta.*) [Quoted in *Vivādaratnākara*, p. 459; *Smṛtitattva* II, p. 178; *Vyavahāramayūkha*, p. 90.]

NOTES

'*Arthādāna*,' taking for himself, without the father's permission, what belongs to all; the *Pārijāta* however explains it as 'acquiring wealth.'—'*Visarga*' is giving away;—'*ākṣepa*,' realising dues from debtors.—(*Vivādaratnākara*, pp. 459-460.)

The sons are not free to do what they like with the property—in regard to such acts as partition, the performance of rites calculated to bring rewards, carrying on business and so forth.—The terms '*ādāna*' and '*visarga*' stand for *carrying on business*,—'*ākṣepa*,' for reprimanding slave-girls and such acts. So says Madana.—(*Vyavahāramayūkha*, p. 90.)

32. शङ्खलिखित] जीवति पितरि रिक्थविभागोऽनुमतः—प्रकाशं वा मिथो धर्मतः ।

While the father is living, there can be partition of the property only when permitted by him ; and this should be done in the rightful manner, either publicly or privately.—(*Shaṅkha-Likhita.*) [Quoted in *Smṛtichandrikā*, p. 607; *Vivādaratnākara*, pp. 29, 463.]

NOTES

The partition of property during the father's lifetime may be done '*publicly*'—in the presence of relatives,—or '*privately*,'—and in a manner in keeping with righteousness.—(*Smṛtichandrikā.*)

'*Permitted*,'—by the father.—'*Publicly*,'—in the presence of umpires ;—'*privately*,'—not in the presence of umpires.—(*Vivādaratnākara.*)

This indicates that during the father's lifetime, the sons have no ownership of the property and that their partition is dependent upon the father's wish.—(*Dāyabhāga*, p. 29.)

33. शङ्खलिखित] (*a*) पितर्यशक्ते कुटुम्बव्यवहारं ज्येष्ठः कुर्यात्—अनन्तरो वा कर्मज्ञस्तदनुमतेन। (*b*) न स्वकामे पितरि रिक्थविभागः। वृद्धे विपरीतचेतसि दीर्घरोगिणि वा ज्येष्ठ एव पितृवदर्थान् पालयेदितरेषाम्। रिक्थमूलं हि कुटुम्बम्। अस्वतन्त्राः पितृमन्तः। मातर्यप्येवमवस्थितायाम् [*v.l.*, मातुरप्येवमवस्थितायाः]

(*a*) On the father becoming disabled, the eldest brother shall carry on the business of the family; or with his permission, the next brother who may have knowledge of business.—(*b*) There shall be no partition of the property if the father is unwilling. If the father has become too old, or of demented mind, or attacked by a long illness, the eldest brother shall guard the property of all others in the same manner as the father ; as the property is the basis of the family ; and those whose father is alive are not independent. Similarly while the mother is alive.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 460 ; *Smṛtitattva* II, p. 178; *Vyavahāramayūkha*, p. 96.]

NOTES

'*Anantaraḥ*,' younger brother ;—'*Tadanumatena*,' with the permission of the eldest brother ;—*Viparītachetasi*,' with mind demented through the effects of the wind-humour.—'*Kuṭumbam*' maintenance of the family ;—'*asvatantrāḥ*,' not independent or free, *i.e.*, not entitled to give away and

so forth;—'*mātaryapi*'—so long as the mother, possessed of excellent qualities, is alive, the sons are not free to give away, etc.—(*Vivādaratnākara.*)

The meaning is that if the father is incapable, or attacked by a protracted illness, the eldest brother, while vetoing partition, shall look after the household.—(*Smṛtitattva* II.)

'*Anantaraḥ*'—younger brother.—(*Vyavahāramayūkha.*)

34. नारद 13. 37.] भ्रातॄणामविभक्तानामेको धर्मः प्रवर्तते ।
विभागे सति धर्मोऽपि भवेत् तेषां पृथक् पृथक् ।

Among undivided brothers, there is a single (common) performance of religious duties; after division, each has to perform the religious duties separately.—(Nārada, 13. 37.) [Quoted in *Vīramitrodaya*, p. 549; *Smṛtitattva* II, p. 164.]

NOTES

Whatever act—either for visible (temporal) purpose or for invisible, (spiritual), purpose,—is done with the help of the property that has not been partitioned,—the reward of that act accrues to all the coparceners.—(*Vīramitrodaya*, p. 549; also *Smṛtitattva* II, p. 164.)

35. व्यास] भ्रातॄणां जीवतोः पित्रोः सहवासो विधीयते ।
तदभावे विभक्तानां धर्मस्तेषां विवर्धते ।

It has been laid down that during the lifetime of the parents, the brothers should live together; on the death of the parents, if they become separated, their righteousness becomes augmented.—(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 606; *Aparārka*, p. 719; *Dāyabhāga*, p. 60; *Vīramitrodaya*, p. 575.]

NOTES

After the brothers have completed the study of the Veda, and are fully competent to perform the *Agnihotra* and other rites, it is better that they should become separated.—(*Aparārka*, p. 719.)

The injunction of 'living together' serves to forbid partition; and partition is also forbidden for those whose parents are alive; when the text speaks of the 'parents,' both father and mother are not meant; the meaning being that there should be no partition while *either* of the two parents is alive; it would be right and proper only after the death of *both*.—(*Dāyabhāga*, p. 60.)

Vīramitrodaya (p. 575) repeats the exact words of *Dāyabhāga*.

· Section 1 (d)

VIRTUE OF PARTITION

36. मनु 9. 111.] एवं सह वसेयुर्वा पृथग् वा धर्मकाम्यया ।
पृथग् विवर्धते धर्मः, तस्माद् धर्म्या पृथक् क्रिया ॥

Thus may they live either jointly, or separately, with a view to spiritual merit; by separate living, merit prospers; hence separation is meritorious.—[Manu, 9. 111.) [Quoted in *Aparārka*, pp. 719, 722; *Parāsharamādhava*, p. 333; *Vivādaratnākara*, p. 459; *Vivādachintāmaṇi*, p. 195; *Dāyabhāga*, pp. 16, 21; *Vīramitrodaya*, p. 557; *Vivādachandra*, 19. 2. 2.]

NOTES

Inasmuch as no one voluntarily incurs any responsibilities regarding the performance of Jyotiṣṭoma and other sacrifices, the text recommends separation, with a view to the performance of such acts. It does not mean that non-separation is sinful; all that is meant is that separation is meritorious. —(*Medhātithi.*)

'*Pṛthāgvā*,'—*i.e.*, if they are intent upon righteousness.—'*Pṛthagvivardhate*,' becomes greater.—'*Dharmyā*,' meritorious.—(*Sarvajñanārāyaṇa.*)

Brothers, not divided, should live together; but with a desire to acquire spiritual merit, they should divide and live separately; and if they live separately, each of them performs separately the five 'great sacrifices' and other religious acts, and thereby 'merit prospers.' For this reason the act of separation serves the purposes of righteousness. Bṛhaspati has also said—'So long as they live and have their dinner together, the worshipping of Gods, Pitṛs and Brāhmaṇas is done only once; when they become separated, it is done in the house of each of them.'—(*Kullūka.*)

Having declared that they should live together after the father's death, the text goes on to add that if they are inclined to be righteous, they should divide.—'*Dharmyā*,' for the purpose of spiritual merit, not for the purpose of independence; it is for this reason that the text has added the phrase '*with a view to spiritual merit.*' Says Bṛhaspati (see above in *Kullūka*).—(*Rāgavānanda.*)

'*They should live*,' *i.e.*, the brothers should live.—(*Nandana.*)—After the brothers have all studied the Veda and become competent to perform the *Agnihotra* and other rites, it is better that they should separate.—(*Aparārka* p. 719.)—It is not meant that after the death of the parents, they *must* separate.—(*Ibid.*, p. 722.)

After the father's death, the brothers should effect separation, for the purpose of augmenting spiritual merit.—(*Parāsharamādhava*, p. 333, where the text is attributed to Prajāpati.)

Inasmuch as joint property cannot be used by any coparcener according to his will, there can be no performance of any such rites as the *Agnihotra* and the like, which could be performed only with such wealth as belonged entirely to one's own self; for this reason the present text lays down *separation* as right and proper, for the purpose of the accomplishment of those rites.—'*Pṛthagvā dharmakāmyayā*'—This does not mean that if they did not separate, sin would accrue to them; all that is meant is that separation brings about spiritual merit.—(*Vivādaratnākara*, p. 459.)

The brothers may separate, with a view to spiritual merit.—(*Vivādachintāmaṇi*, p. 195.)

There is no such restriction as that there must be separation.—(*Dāyabhāga*, p. 16.)—The terms '*saha-pṛthagvā*' and '*kāmyayā*' serve to indicate that the wish of the brothers is the determining factor.—(*Ibid.*, p. 21.)

Living together has been commended; but for the purposes of augmenting spiritual merit, separation should be effected.—'*Dharma*' here stands for such religious acts as the worshipping of gods and so forth; as it is only these acts with regard to which it has been declared (by Bṛhaspati) that they should not be performed separately while the brothers are living together.—(*Vīramitrodaya*, p. 557.)

37. बृहस्पति 25. 6.] एकपाकेन वसतां पितृदेवद्विजार्चनम् ।
एकं भवेद् विभक्तानां तदेव स्याद् गृहे गृहे ॥

For those who live and cook their food together, there is only one (common) worship of Pitṛs, Deities and Brāhmaṇas; for those who have separated, it should take place in each house separately.—(Bṛhaspati, 25. 6.) [Quoted in *Aparārka*, p. 719; *Smṛtichandrikā*, p. 607; *Parāsharamādhava*, p. 334; *Vivādaratnākara*, p. 459; *Vivādachintāmaṇi*, p. 195; *Vīramitrodaya*, p. 557; *Vivādachandra*, 19. 2-3.]

NOTES

So long as by reason of their being too young, the property of the younger brothers has not been separated from that of the eldest brother,—there is no separate performance, by them, of such rites as the *Vaishvadeva* and the rest.—(*Aparārka*, p. 719.)

'*Cooking their food together*'—means 'so long as there has been no separation.'—(*Vivādaratnākara*, p. 459.)

When a joint property has been partitioned among the coparceners, each coparcener is free to perform sacrifices independently of the other coparceners; and in this manner partition brings about augmentation of spiritual merit.—(*Vivādachintāmaṇi*, p. 195.)

38. शङ्खलिखित] कामं वसेयुरेकतः संहता वृद्धिमाप्नुयुः ।

They may, if they wish, live together; united, they would clearly bring about prosperity.—(*Shankha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 456.]

NOTES

'*Samhatā*,'—*i.e.*, with one another's support.—'*Vṛddhimāchakṣīran*' —would clearly bring about prosperity, *i.e.*, would become prosperous.—(*Vivādaratnākara*, p. 459.)

39. गौतम 28. 4.] विभागे धर्मवृद्धिः ।

After partition, there is augmentation of spiritual merit. —(Gautama, 28. 4.) [Quoted in *Dāyabhāga*, p. 62.]

NOTES

This should be understood to refer to partition made after the mother's death.—(*Dāyabhāga*, p. 62.)

40. संग्रहकार] क्रियते स्वं विभागेन पुत्राणां पैतृकं धनम् ।
स्वत्वे सति प्रवर्तन्ते तस्माद् धर्म्या पृथक् क्रिया ॥

By partition, the sons make their paternal property their own; it is only when their ownership has come about that actions proceed; therefore separation is conducive to spiritual merit.—(*Sangrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 607; *Vīramitrodaya*, p. 557.]

NOTES

'*Proceed*,'—*i.e.*, the performance of *Agnihotra* and other rites, begin to be performed by them.—It is not right to say that the paternal property is made 'own' by the sons by partition. Because ownership is brought about by their very birth; so that even before partition, the ownership is already there.—(*Smṛtichandrikā*, p. 607.)

'*Proceed*,'—are performed,—the *Agnihotra* and other rites.—(*Vīramitrodaya*, p. 557.)

41. नारद 13. 39.] साक्षित्वं प्रातिभाव्यं च दानं ग्रहणमेव च ।
विभक्ता भ्रातरः कुर्युर्नाविभक्ताः परस्परम् ॥

Giving evidence, becoming surety, making gifts, receiving gifts,—these may be done by brothers among themselves only after they have separated,—not while they remain unseparated.—(Nārada, 13. 39.) [Quoted in *Vīramitrodaya*, p. 549; *Smṛtitattva* II, p. 164.]

NOTES

This prohibition is based upon equity.—(*Vīramitrodaya*, p. 549.)

The prohibition of mutual giving, etc., among undivided coparceners is quite equitable; even before the gift is made, the ownership over that gift of the receiver of the gift is already there; so that there could be no giving or receiving in the case. Similarly with giving evidence and standing surety.—(*Smṛtitattva* II, p. 164.)

Section 1 (e)

METHOD OF PARTITION

42. बृहस्पति 25. 7.] द्विप्रकारो विभागस्तु दायादानां प्रकीर्तितः ।
वयोज्यैष्ठ्यक्रमेणैकः समाऽपरांशकल्पना ॥

Partition among coparceners is declared to be by two methods: one, in accordance with seniority of age, and the other, by the allotment of equal shares.—(*Bṛhaspati*, 25. 7.) [Quoted in *Smṛtitattva* II, pp. 170, 193.]

Notes

Bṛhaspati here speaks of two kinds of partition, one in which additional shares are set apart for the elder brothers, the other in which no such shares are set apart.—'*In accordance with seniority of age*'—This refers to the case where the elder brothers get additional shares. (*Smṛtitattva* II, p. 170.)

43. मनु 9. 108.] पितेव पालयेत् पुत्रान् ज्येष्ठो भ्रातॄन् यवीयसः ।
पुत्रवच्चानुवर्तेरन् ज्येष्ठे भ्रातरि धर्मतः ॥

The eldest shall support the younger brothers, just as the father supports his sons; and the younger brothers in duty bound shall behave towards the eldest brother like sons.—(Manu, 9. 108.) [Quoted in *Dāyabhāga*, p. 121.]

Notes

They should be supported like sons; but they shall not be deprived of property on the ground of being younger in age.—(*Medhātithi.*)

If there is no partition, the eldest brother shall support—with food and clothing and other things,—his younger brothers.—(*Kullūka.*)

The meaning is that the younger brothers have as much right over the father's property as over what has been acquired by the eldest brother without detriment to that property; the only difference being that while even uneducated brothers have a right over the father's property, it is only the educated that are entitled to what has been acquired by the eldest brother.—(*Dāyabhāga*, pp. 121-122.)

44. (?)] स्वग्रामज्ञातिसामन्तदायादानुमतेन च ।
हिरण्योदकदानेन षड्भिर्गच्छति मेदिनी ॥

Land passes (from the possession of one to that of another) under six conditions : the consent of the village, of paternal relatives, of neighbours and of coparceners, and by giving gold and water. [Quoted in *Mitākṣarā*, p. 612 ; *Smṛtitattva* II, p. 176.]

Notes

The consent of the 'village' is held to be essential in view of the injunction that 'the acceptance of gifts should be done openly, specially in the case of immovable property'; and is meant for the purpose of making the transaction known; and it is not meant that without such consent the transaction is invalid; —the consent of '*neighbours*' is required for the purpose of removing all disputes regarding boundaries ;—the necessity of the consent of relatives has been already emphasised.—'*By giving gold and water.*'—The selling of immovable property having been deprecated, and its giving having been commended, whenever such property is sold, the selling should be done in the manner of a gift, and as such accompanied by the gift of gold and water.—(*Mitākṣarā*, p. 612.)

After the property has been partitioned, the consent of the coparceners to any gift that may be made is required only for the purpose of setting aside all doubts regarding the boundaries of divided and undivided property; and it is necessary in the same manner as the consent of the co-villagers, neighbours and the rest.—'*Dāyāda*' stands for the daughter's son and the like; the paternal relations, '*Jñāti*,' are mentioned separately.—'*Gold and Water*,'—even when land is sold, the selling should, in the manner of gifts, be accompanied by the giving of water and gold ; so says Vijñāneshvara.—(*Smṛtitattva* II, pp. 176-177.)

45. अर्थशास्त्र II, p. 45.] देशस्य जातेः सङ्घस्य धर्मो ग्रामस्य वापि यः [*v.l.*, यो भृगुः]
कात्यायन] उचितस्तस्य [उदितः स्यात् स *v.l.*,] तेनैव दायधर्मं प्रकल्पयेत् ॥

Whatever may be the law prevalent in the country, or among the caste, or in the corporation, or in the village,—according to that should there be disposal of inheritance;—says Bhṛgu.—(*Arthashāstra* II, p. 45 ; and *Kātyāyana*.) [Quoted in *Vivādaratnākara*, p. 505 ; *Smṛtitattva* II, p. 165.]

Notes

Partition of property is effected by the diversities of place and other things also.—(*Smṛtitattva*, II, p. 165.)

Section 2 (a)

WHAT CAN BE DIVIDED ?

46. कात्यायन] पैतामहं च पित्र्यं [*v.l.*, पैत्र्यं] च यच्चान्यत् [*v.l.*, यत्किञ्चित्] स्वयमर्जितम् ।
दायादानां विभागे तु सर्वमेतद् विभज्यते ॥

The property of the grandfather, the property of the father, and whatever else may have been self-acquired (by any individual), all this is divided at the time of partition among coparceners.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 635 ; *Vivādaratnākara*, p. 496 ; *Vivādachintāmaṇi*, p. 210; *Dāyabhāga*, p. 105; *Vibhāgasāra*, 7. 1. 1; *Dāyanirṇaya*, 14. 1. 10.]

NOTES

'*Self-acquired*'—with the help of the undivided ancestral property. What is acquired without such help is not partible. All the three kinds of property (mentioned in the context) are divided;—that is to say, if there is no debt contracted by the grandfather and others remaining unpaid. If there is such debt, what is divided, is not the whole, but only what remains after the clearing off of the debt.—(*Smṛtichandrikā*, p. 635.)

'*Self-acquired*,'—*i.e.*, in a manner other than that which would make the property entirely his own.—(*Vivādaratnākara*, p. 496.)

'*Self-acquired*'—with the help of the father's property.—(*Vivādachintāmaṇi*, p. 210) ;—'*Svayamarjitam*,' acquired by oneself with the help of the father's property.—(*Vibhāgasāra*, 7. 1. 1.)

'*Yachchānyat*' ; the cumulative particle '*cha*' is to be construed with '*svayam*'; the meaning being 'what has been self-acquired *and also* what has been acquired with that self-acquired property, by others' ; that is why the acquirer of the original property has a double share, as laid down by Vyāsa (see sec. 52 below).—(*Dāyanirṇaya*, 14. 2. 1.)

47. नारद 13. 32.] यच्छिष्टं पितृदायेभ्यो [*v.l.*, दानेभ्यो] वद्दत्तं पैतृकं च यत् [*v.l.*, (*a*) दत्त्वर्णं पैतृकं ततः (*b*) यद्दत्तं पैतृकाद्धनात्]
भ्रातृभिस्तद् विभक्तव्यम्, ऋणी न स्याद् यथा [स्यादन्यथा *v.l.*,] पिता ।

What is left after the discharge of the father's obligations, and what had been given away by the father [*v.l.*, after the payment of the father's debts], shall be divided by the brothers; so that the father may not remain a debtor.—(*Nārada*, 13. 32.) [Quoted in *Vivādaratnākara*, p. 496; *Vivādachintāmaṇi*, p. 210; *Dāyabhāga*, p. 25; *Vīramitrodaya*, p. 557; *Vibhāgasāra*, 7. 1. 2.)

NOTES

See Chapter II, sec. 285.

'*Pītṛdāyāt.*'—The father's liabilities.—*Yaddattam*,' what the father had promised to give.—All these liabilities should be cleared, and what remains of the property should be divided among themselves.—(*Vibhāgasāra*, 7. 1. 3; also *Dāyanirṇaya*, 21. 2. 3.)

'*Pitṛdāya*'—What had been promised by the father to other people.—The author of the *Prakāsha* has read '*Pītṛdāna*'; it makes no difference in the meaning.—(*Vivādaratnākara*, p. 496.)

'*Pītṛdāya*'—Father's debts.—'*Dattam*'—promised by the father to be given.—The meaning is that the sons shall divide among themselves what remains after the father's debts have been paid.—(*Vivādachintāmaṇi*, p. 210.)

What is meant by this text is to lay down the necessity of paying the father's debts, not the time for partition.—(*Dāyabhāga*, p. 25; *Vīramitrodaya*, pp. 557-558.)

48. कात्यायन] ऋक्थं [*v.l.*, ऋणं] प्रीतिप्रदानं तु दत्त्वा शेषं विभाजयेत् ।

The sons shall hand over (to the recipient) the property that may have been promised by the father as a loving gift, [or *v. l.*, shall pay off the debt and the gifts promised by the father], and then divide the remainder among themselves.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 496; *Smṛtichandrikā*, p. 635.]

NOTES

The property that the father may have promised to some one, through his love for him,—that property should be given away, and the remainder should be divided.—(*Vivādaratnākara*, p. 496.)

It is clear that this refers to cases where there is a lot of property to be partitioned.—(*Smṛtichandrikā*, p. 635.)

49. कात्यायन] दृश्यमानं विभज्येत गृहक्षेत्रं चतुष्पदम् ।
गूढद्रव्याभियुक्तानां प्रत्ययस्तत्र कीर्तितः ॥

Whatever is visible, in the shape of houses, fields, and quadrupeds, should be divided; if there is a suspicion that something is being concealed, recourse should be had to ordeals.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, pp. 645, 636; *Aparārka*, p. 723; *Vivādaratnākara*, p. 498; *Smṛtitattva* II, p. 171; *Vyavahāramayūkha*, p. 123.]

NOTES

Irrespectively of the prohibition of the partition of the household and other things, the text lays down their partibility.—(*Smṛtichandrikā*, p. 645.)—'*Pratyaya*' is ordeal, and that also of the particular kind called '*Kosha.*'—(*Ibid.*, p. 636.)

Pratyaya is *ordeal.*—(*Aparārka*, p. 723; *Vivādaratnākara*, p. 498; and *Smṛtitattva* II, p. 171.)

50. कात्यायन] गृहोपस्करवाह्याश्च [*v.l.*, दि] दोह्याभरणकर्मिणः ।
दृश्यमाना विभज्यन्ते कोशं गूढेऽब्रवीद् भृगुः ॥
[*v.l.*, गूढे कोशोऽभिधीयते]

Household utensils, conveyances, milch cattle, ornaments and servants, these are divided as they are found. If there is suspicion of concealment, recourse shall be had to ordeal, as declared by Bhṛgu.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, pp. 635, 636; *Aparārka*, p. 723; *Vivādaratnākara*, p. 498; *Parāsharamādhava*, p. 376; *Smṛtitattva*, p. 171; *Vyavahāramayūkha*, p. 123.]

NOTES

'*Karmiṇaḥ*,'—servants, slaves and others.—'*Gūḍhe*,'—If there is any property that is concealed,—*i.e.*, if deception is suspected,—recourse should be had to the ordeal called '*Kosha*.'—(*Smṛtichandrikā*, p. 636, where the second variant of the text is attributed to Bṛhaspati.)

'*Kosha*' here stands for all forms of ordeal.—(*Aparārka*, p. 723.)

This makes clear the meaning of the foregoing text.—'*Gṛhopaskara*' stands for the pestle, the mortar or such articles.—'*Karmiṇaḥ*'—slaves and others.—The rest are well known.—(*Vivādaratnākara*, p. 498.)

The specification of '*kosha*' is meant to exclude the other forms of ordeal.—(*Parāsharamādhava*, p. 376.)

'*Gṛhopaskara*,'—the pestle, the mortar, and such things.—'*Karmiṇaḥ*'—slaves and others.—'*Kosha*'—a particular form of ordeal, the details of which may be found in the *Divyatattva*. The rest is well known.—(*Smṛtitattva* II, p. 171.)

'*Karmiṇaḥ*'—slaves and others.—(*Vyavahāramayūkha*, p. 123.)

51. याज्ञवल्क्य 2. 120.] सामान्यार्थसमुत्थाने विभागस्तु: समः स्मृतः ।

In what accrues to the joint property [or, in what has arisen out of the joint property], the division shall be equal.—(*Yājñavalkya*, 2. 120.) [Quoted in *Parāsharamādhava*, p. 378; *Madanapārijāta*, p. 688; *Vibhāgasāra*, 4. 1–4.]

NOTES

See also Chapter II, Sec. 9.

'*Arthasamutthāna*,'—acquisition of property. If some property has been acquired by all the coparceners with mutual help, it should be divided equally among them.—(*Aparārka.*)

Among undivided brothers, if any one adds to the joint property by means of agriculture, trade or other means,—this additional property shall be divided equally; the person who has acquired it will not have two shares.—(*Mitākṣarā.*)

'*Sāmānyārthasamutthāna*'—That property which has been earned by means of the joint property.—'*Tu*' emphasises the necessity of partition. Even though the property may have been acquired by the bodily labour and other efforts by any one coparcener, it should be divided equally. But this shall be so only in the case of brothers, not of all kinds of coparceners.—(*Vishvarūpa.*)

When all the brothers have acquired a property jointly by such means as agriculture, trade and the like, the division shall be equal among all of them. The particle '*tu*' serves to differentiate this case from that of the property that may have been acquired by a brother independently of the (joint) ancestral property, which latter is not partible.—(*Viramitrodaya*, Commentary on *Yājñavalkya.*)

This refers to cases where the property has been acquired by means other than learning,—such as agriculture and the like.—(*Parāsharamādhava*, p. 378.)

If the joint property has been augmented by means of agriculture, trade and other means, the addition shall be divided equally among all; and the individual acquirer shall not have two shares.—(*Madanapārijāta*, p. 688.)

'*Samutthāna*' is increase, augmentation. The meaning is that the acquirer does not do any thing more than the others. This refers to cases when the acquisition has been equal.—(*Vibhāgasāra*, 4. 1—4.)

52. व्यास] साधारणं समाश्रित्य यत् किञ्चिद् वाहनायुधम् [*v.l.*, दिकम्] ।
शौर्यादिनाऽऽप्नोति धनं भ्रातरस्तत्र भागिनः ।
तस्य भागद्वयं देयं शेषास्तु समभागिनः ॥

If any one of the brothers, while depending upon the joint property, acquires, by bravery and such other means, any such property as conveyance and weapons, the brothers

shall share that property ; two shares out of it should go to the acquirer and the remainder shall be divided equally among the rest.—(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 640; *Vivādaratnākara*, p. 508; *Aparārka*, p. 725; *Parāsharamādhava*, p. 379; *Dāyabhāga*, pp. 107, 111; *Madanapārijāta*, p. 688; *Smṛtitattva* II, p. 176; *Vyavahāramayūkha*, p. 127; *Vibhāgasāra*, 3. 2–11, 9. 1–12; *Dāyanirṇaya*, 14. 2. 1.]

NOTES

'*Joint property*'—Property belonging to those not separated;—the term '*brothers*' stands here for *coparceners in general*.—'*By bravery and such other means*,'—this is meant to indicate the partibility of all those other kinds of property which a coparcener may obtain in marriage and so forth, on the basis of the joint property.—(*Smṛtichandrikā*, p. 640.)

This should be taken as applying to all those kinds of property obtained by learning, bravery and the like, which do not fall within those specifically declared to be impartible.—(*Vivādaratnākara*, p. 508.)

The acquirer worked through his body as also through the property, while the other cosharers worked through the property only; hence it is only equitable that the former should have a double share.—(*Dāyanirṇaya*, 14. 2-3.)

This refers to cases where the additional property has been acquired with the help of the ancestral property.—(*Aparārka*, p. 725.)

Just as in the case of the property acquired by learning, through the help of the property of the father and others, so also in the property acquired by bravery and other means,—the acquirer is entitled to two shares.—(*Parāsharamādhava*, p. 379.)

The mere fact of a property having been obtained by bravery and other means does not make it impartible; under certain circumstances, such property also is partible, *e.g.*, this text speaks of partition of such property when acquired with the help of the joint property.—(*Dāyabhāga*, p. 107.)—This text lays down a double share for the earner in the property that he may have acquired by drawing upon the joint property.—When however the property in question has been acquired by the earner entirely with the operations of his own body and with the help of his own personal property,—he receives not only two shares, but much more; in fact, he receives the whole of it.—(*Ibid.*, p. 111.)

This provides an exception to the general rule that the gains of bravery and other means are not partible.—(*Madanapārijāta*, p. 688.)

'*Brothers*,'—This term stands for all members of the joint family, uncle and the rest.—If, in the earning, some injury has been caused to the joint property, the share received by the coparceners in the newly acquired property shall be in proportion to his share in the loss sustained by the joint property; such is the view of *Dāyabhāga*.—(*Smṛtitattva* II, p. 176.)

One who has earned more with the help of the joint property shall receive a double share.—(*Vibhāgasāra*, 4. 1-2.) This refers to cases where the additional

property has been acquired with the help of the joint property.—'*Shauryādi*' stands for 'that of which Bravery is the first'—so that Learning also becomes included; and in all 'gains of learning,' defined by Kātyāyana, the acquirer receives a double share.—(*Ibid.*, 9. 2. 1.)

53. बृहस्पति 25. 14.] समवेतैस्तु यत् प्राप्तं सर्वे तत्र समांशिनः ।

What has been acquired conjointly,—in that all are equal sharers.—(*Bṛhaspati*, 25. 14.) [Quoted in *Mitākṣarā*, p. 636.]

NOTES

See Chapter II, sec. 260, and Chapter V, sec. 19.

54. कात्यायन] विभक्ताः पितृवित्ताच्चेत् एकत्र प्रतिवासिनः ।
विभजेयुः पुनर्द्व्यंशं स लभेतोदयो यतः ॥

When, after having partitioned the paternal property, several brothers live together, they shall divide the property (that may be acquired by any one of them),—the acquirer receiving a double share.—(*Kātyāyana.*) [Quoted in *Dāyabhāga*, p. 110.]

NOTES

The meaning of this, as explained by Shrīkara, is that among reunited brothers, if any one acquires new property with the help of the joint property, it will be divided among them; the acquirer receiving a double share and the others, one share each.—And the sense of the original text and this explanation appears to be that—'Where the new property has been acquired without the help of the joint property, it belongs to the acquirer only, even though he may be a member of a reunited joint family; and such property will not be regarded as 'joint property'; that such is the sense follows from the fact that no additional share is found to have been prescribed for the acquirer in cases where the acquisition has been without the help of the joint property. Such being the case, the rule embodied in the text should apply to cases where there has been no separation at all; as the only condition—that of *living together*—would be fulfilled in that case also. Inasmuch as the text can be taken as laying down a double share for the person who has acquired the property with the help of the joint property, it would not be proper to take it only as applying to the case of *reunited* coparceners.—(*Dāyabhāga*, pp. 110-111.)

55. वसिष्ठ 17. 51.] येन चैषां स्वयमुत्पादितं स्यात् स द्व्यंशमेव हरेत् ।

Among them (brothers or coparceners) if any one has acquired something by himself, he shall receive

a double share.—(*Vasiṣṭha*, 17. 51.) [Quoted in *Parāsharamādhava*, p. 378; *Vivādaratnākara*, p. 508; *Vibhāgasāra*, 4. 1. 1.]

NOTES

This prescribes a double share for the acquirer in the property that he has acquired with the help of the paternal property.—(*Parāsharamādhava*, p. 378.)

If among several coparceners, any one acquires, with the help of the joint property, something by agriculture and other means, he shall receive a double share, the rest receiving only one share each.—(*Vivādaratnākara*, p. 508.)

The meaning is that one who is superior in learning and other qualities is entitled to two shares.—(*Vibhāgasāra*, 4.1.1.)

56. मनु 9. 204.] यत् किञ्चित् पितरि प्रेते धनं ज्येष्ठोऽधिगच्छति ।
भागो यवीयसां तत्र यदि विद्यानुपालिनः ॥

Whatever property the eldest brother acquires after the death of the father, a share of that shall belong to the younger brothers, if they are devoted to learning.—(Manu, 9. 204.) [Quoted in *Aparārka*, p. 725; *Mitākṣarā*, p. 635; *Vivādaratnākara*, p. 507; *Dāyabhāga*, p. 121; *Vivādachandra*, 22. 1. 1.]

NOTES

If the elder brother acquires more property, either through a hereditary friend, or from the king or his ministers or priests, or out of the farm by the employment of special methods,—such property shall be common to all the brothers, and the eldest brother shall entertain no such notion as that 'this property, which was not acquired by our father, has been acquired by me, through my own efforts, and hence it is mine only.'—'*Devoted to learning*,'—this shows that the rule here laid down pertains to mechanics, artisans and others who subsist by their learning, such as physicians, dancers, musicians and so forth.—(*Medhātithi*.)

The eldest brother, who has not yet separated, shall give to the younger brothers a share in what he may acquire by proficiency in learning.—By specifying the eldest brother, the text implies that there is no such share for the elder brother in the property acquired by the younger brother in similar circumstances.—(*Sarvajñanārāyaṇa*.)

On the father's death, if the eldest brother, who has not been separated from his brothers, acquires property by his own efforts,—in that property there should be a share for such of his younger brothers only as may be studying at the time, not for others.—(*Kullūka* and *Rāghavānanda*.)

Before laying down the impartibility of the gains of learning, the author mentions an exception to it. The 'property' meant here is what is acquired

by learning.—'*If they are devoted to learning*'—This shows, specially on the strength of what follows in Manu, 9. 205, that the eldest brother, even though devoted to learning, is to have no share in what is acquired by learning by the younger brothers; also because the text specially mentions the 'eldest' and 'younger' brothers.—(*Nandana.*)

'*The eldest brother,*'—who is not separated.—(*Rāmachandra.*)

'*Vidyānupālinaḥ,*'—engaged in acquiring knowledge; this refers to the younger brothers.—(*Aparārka,* p. 725, where the text is attributed to Nārada.)

This text has been taken to be indicative of the partibility of all those properties that have been acquired as friendly gifts and the like, by the eldest or the middle or the youngest brother,—among the younger and elder brothers.—But this is not right. In reality this text only provides an exception to the general rule that 'property acquired,—either before or after the father's death,—by individuals by way of friendly gifts and the like is not partible.'—(*Mitākṣarā,* pp. 635-636.)

Whatever property the eldest brother acquires, by means of his exceptional knowledge,—in that property acquired by the eldest brother, that brother will have two shares, and the younger brothers will have one such share each, if these latter are engaged in acquiring learning.—(*Vivādaratnākara,* p. 507.)

The meaning is that, inasmuch as according to Manu (9. 108) the eldest brother is to protect the younger brothers like a father, and the younger brothers are to obey him like their father,—it is only right that, standing as they do in the relation of father and son,—just as the younger brothers are partakers in the property left by their father, so also are they entitled to a share in what has been acquired by the eldest brother even without the help of the ancestral property; there is however this difference that while to the father's property even illiterate sons are entitled, to the property in question only the educated brothers are entitled.—(*Dāyabhāga,* pp. 121-122.)

If the younger brothers are devoted to that learning by which the eldest brother has acquired the property, then after the eldest has taken two shares out of it, the remainder is to be divided equally among the said younger brothers.—(*Vivādachandra,* 22. 1. 1.)

57. कात्यायन] भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम् ।
विभागकाले देयं तत् रिक्थिभिः सर्वमेव तु ॥
तद्दद्यं धनिने देयं नान्यथैव प्रदापयेत् ।
भावितं चेत् प्रमाणेन विरोधात् परतो यदा ॥

Whatever debt may have been incurred, for purposes of the family, by the brother, the paternal uncle or the mother, should all be paid by the coparceners at the time of partition. The debt shall be repaid to the creditor; if the debt is denied by the other party, and the creditor proves it by adequate evidence, the debtor-party should be compelled to repay it.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 496.]

NOTES

If, in regard to the debt incurred by the brother and others, there is denial and the matter becomes doubtful,—it should be made to be paid to the creditor,—only if after the denial, the creditor establishes it by means of proofs,—not otherwise.—(*Vivādaratnākara*, p. 497.)

58. शङ्ख or ऋष्यशृङ्ग } पूर्वनष्टां तु यो भूमिमेकश्चाभ्युद्धरेत् क्रमात् ।
यथाभागं लभन्तेऽन्ये दत्त्वांशं तु तुरीयकम् ॥

If a landed property of which the family had been dispossessed, is recovered, in due course, by any one of them,—the others shall receive their proper shares after having given up (to the recoverer) the fourth part (of the property).—(Shaṅkha,—or Ṛṣyashṛṅga, according to *Aparārka*.) [Quoted in *Smṛtichandrikā*, p. 642; *Aparārka*, p. 724; *Mitākṣarā*, p. 628; *Parāsharamādhava*, p. 376; *Madanapārijāta*, p. 684; *Dāyabhāga*, p. 129; *Vīramitrodaya*, p. 708; *Smṛtitattva* II, pp. 166, 177; *Vyavahāramayūkha*, p. 124; *Vivādaratnākara*, p. 499; *Dāyanirṇaya*, 21. 2. 1.]

NOTES

The sons, grandsons and other descendants of the original proprietor having become dispossessed of ancestral landed property, by a stranger,—if any one of them recovers it, by his own efforts, he shall receive a fourth part of the property as his special share, and the remainder of the property shall be divided equally among all the coparceners, including the recoverer. Some people have explained this text as pertaining to the case of all kinds of property where the recovery has been made without any such agreement on the part of the coparceners as that 'if you succeed in recovering the property you may take it yourself.'—(*Smṛtichandrikā*, p. 642.)

What has been recovered without the consent of the coparceners,—of that the recoverer shall take for himself the fourth part, the rest being divided equally among the recoverer and the rest. What has been recovered with the consent of the coparceners is not to be divided among the coparceners, the recoverer retaining the whole of the recovered property (as declared by Yājñavalkya, 2.119—see next section 'On What Cannot Be Partitioned').—(*Aparārka*, p. 724.)

Yājñavalkya (2.119) having declared that any ancestral property that is recovered by a coparcener after having been out of the possession of the family, cannot be shared with other coparceners,—the present text makes an exception in regard to landed property; where the recoverer reserves a fourth of the property as his special share and divides the rest equally among himself and others.—(*Mitākṣarā*, p. 628.)

The ancestral property having been taken away by thieves and others,—if any one of the sons happen to recover it, with the consent of the others, it should belong to the recoverer alone ; but if it is landed property, the recoverer shall reserve for himself only the fourth part, the rest being divided equally among all.—(*Parāsharamādhava*, p. 676.)

This is a special rule laid down by Shankha in regard to lands of which a family had been dispossessed but which has since been recovered; the meaning is that a fourth part of the property shall be given to the person who has recovered it and the remainder of the land they shall divide equally among all.—(*Madanapārijāta*, p. 684.)

Though the particle '*eva*' shows that the pecuniary and bodily efforts are all his own, yet the recoverer's right over the land cannot be entirely his own ; in fact, he is entitled only to a fourth part of the redeemed land as his special share.—(*Dāyabhāga*, p. 129.)

One-fourth of the redeemed property is to be given to the recoverer as the price of his effort; and the remaining three-fourths shall be divided equally among all.—This is a special rule relating to such ancestral landed property as has been recovered without any injury to any ancestral property, entirely by means of bodily labour or by service and such other means.—(*Vīramitrodaya*, p. 708.)

As a rule, an ancestral property having been taken away by a stranger by force, if any one of the coparceners recovers it, with the consent of the coparceners, then he should not share it with all the coparceners ; but in the case of landed property, it shall be as laid down in the text. What the *Vivādaratnākara* has said regarding the unauthoritative character of this text is not right ; because it has been quoted in the *Mitākṣarā* and the *Dāyabhāga*, and other works.—(*Smṛtitattva* II, p. 177.)

The *Vivādaratnākara* (p. 499) attributes the text to Hārīta and adds that it has not been quoted in such authoritative works as the *Smṛtimahārṇava*, *Kāmadhenu*, *Kalpataru*, *Pārijāta* and the rest, and hence what is stated herein cannot be regarded as right.

In this text, Shankha has laid down a special rule regarding the landed property that has been recovered. Out of the recovered property a fourth part shall be given to the recoverer and the remainder shall be divided equally among all the coparceners including the recoverer.—(*Vyavahāramayūkha*, p. 124.)

Where a landed property had been taken away by strangers, and not recovered by the father or the grandfather,—if such property is recovered by the effort of any one of the brothers, then such brother will set apart the fourth part of the property as his additional share and divide the remainder equally with all his brothers. From this it is clear that the rule that 'when a coparcener has acquired some property with the help of the joint property, he is to receive two shares' applies to the case of properties other than land.—(*Dāyanirṇaya*, 21. 1—10.)

59. व्यास] कृतेऽकृते वा विभागे रिक्थी यत्र प्रवर्तते ।
सामान्यं चेद् भावयति तत्र भागहरस्तु सः ।

If a coparcener turns up, either after or before the partition has been made,—and if he proves the property to be a joint one,—he is entitled to a share in it.—(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 643.]

NOTES

This text lays down what is to be done if a coparcener discovers some land or other property that may have been concealed by another coparcener. The meaning is that if a coparcener discovers some property that had been concealed by another coparcener and proves it to be partible (joint), he shall receive a double share in that property.—(*Smṛtichandrikā*, p. 643.)

60. कात्यायन] कुले विनीतविद्यानां भ्रातृतः पितृतोऽपि वा [*v.l.*,
भ्रातॄणां पितृतोऽपि वा] ।
शौर्यप्राप्तं तु यद् वित्तं तद् विभाज्यं बृहस्पतिः ॥

If in a joint family some property is acquired through bravery, by those who have acquired learning from a brother, or from the father,—[or *v.l.*, among brothers who have acquired learning in the family from the father, if they have acquired property by bravery] that property should be divided—so says Bṛhaspati.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 638; *Vivādaratnākara*, p. 507; *Vivādachintāmaṇi*, p. 212; *Parāsharamādhava*, p. 378; *Vivādachandra*, p. 21. 2-3; *Smṛtitattva* II, p. 174; *Vyavahāramayūkha*, p. 126.]

NOTES

The meaning is that, in a joint 'family,' if some members have acquired learning with the help of the father's property, or with the help of the father,—any 'property' that they acquire 'through bravery and the rest,' *i.e.*, by that learning, which is a 'gain of learning,' shall be partible,—so Bṛhaspati has declared.—(*Smṛtichandrikā*, pp. 638-639.)

Those brothers who have acquired learning '*in the family*,'—from their grandfather, uncle, and others,—or '*from the father himself*,'—among them, if there is any property that has been acquired by learning, bravery and the like, it should be divided among the brothers.—(*Vivādaratnākara*, p. 507.)

'*Learning*,'—Knowledge of weapons and of the sciences. Thus the meaning is that if one acquires property by means of learning acquired from the father or brothers,—in that property, the other brothers also have shares.—(*Vivādachintāmaṇi*, p. 212.)

If those, who have learnt the sciences from an uncle or the father, in the joint family, acquire property by means of bravery and the like, it is a 'gain of learning' which should be divided.—(*Parāsharamādhava*, p. 378.)

The '*learning*,' meant here is not the *learning of the sciences*, but the art of bravery which one displays under dangerous circumstances.—(*Vivādachandra*, 21. 2-3.)

Among brothers who have acquired learning in the family itself, from the grandfather or the uncle and others, or from the father,—if there is any property that has been acquired through learning or bravery, that property should be divided—so say the *Kalpataru* and the *Ratnākara*.—(*Smṛtitattva* II, p. 174.)

61. नारद, 13.10.] कुटुम्बं बिभृयाद् भ्रातुर्यो विद्यामधिगच्छतः ।
भागं विद्याधनात् तस्मात् स लभेताश्रुतो [*v.l.*, (*a*)
ऽसुतो, (*b*) श्रितो] पि सन् ॥

If one brother maintains the family of another brother who is engaged in acquiring learning, the former shall receive a share in the wealth acquired by the latter through that learning,—even though he himself be illiterate.—(*Nārada*, 13. 10.) [Quoted in *Aparārka*, p. 725; *Mitākṣarā*, p. 631; *Smṛtichandrikā*, p. 638; *Vivādaratnākara*, p. 507; *Vivādachintāmaṇi*, p. 213; *Parāsharamādhava*, p. 378; *Dāyabhāga*, p. 108; *Vivādachandra*, 21. 2—3; *Madanapārijāta*, p. 685; *Vīramitrodaya*, p. 708; *Smṛtitattva* II, p. 174; *Vyavahāramayūkha*, p. 126; *Vibhāgasāra*, 7. 2—11; *Dāyanirṇaya*, 14. 2—9.]

NOTES

While a brother is carrying on studies, if another brother supports his family,—even though he himself be '*ashruta*'—devoid of the knowledge of the Veda and the sciences, illiterate—he should receive a share in the wealth that may be acquired by means of that learning. '*Asutaḥ*,' 'childless,' is another reading for '*ashrutaḥ*,' 'illiterate.' This title to the property is not the natural one based upon the brotherly relationship, but an adventitious one due to the accident of the family of the learner having been maintained by the brother. Thus it follows that by itself, the gain of learning should not be partible.—(*Bālambhaṭṭī* on *Mitākṣarā*, p. 631.)

'*Ashrutaḥ*'—devoid of learning.—(*Vivādaratnākara*, p. 507.)

This shows that in some cases 'gains of learning' also are partible.—(*Parāsharamādhava*, p. 378.)

The implication of the singular number in '*bibhṛyat*' is that, this title to a share in the property would not belong to a number of brothers helping in this manner; while one brother is acquiring learning, if another brother maintains the former's family by spending his own wealth and by his own bodily exertions, he is entitled to a share in the property acquired through that learning.—(*Dāyabhāga*, p. 108; and *Smṛtitattva* II, p. 174.)

This is meant to show the partibility of that 'gain of learning' which has been acquired with the help of joint property.—'*Āshṛtaḥ*' (which is another reading for '*ashrutaḥ*') means 'devoid of learning.'—(*Smṛtichandrikā*, p. 638.)

If a brother maintains the dependents of another who is acquiring learning, he receives a share in the property that may be acquired with the help of that learning.—(*Vivādachandra*, 21. 2-3.)

This lays down a special rule in regard to 'gains of learning.'—'*Ashṛutaḥ*' means *illiterate*, according to the *Madanaratna*; but in reality what it means is 'even though a share may not have been *promised* to him.'—(*Vyavahāramayūkha*, p. 126.)

It follows from this that, if the property has been acquired by means of the knowledge of weapons or sciences learnt from strangers, during the course of which the family of the acquirer has *not* been supported by the coparceners,—then the property in question shall not be divided.—(*Vibhāgasāra*, 8. 1. 1.)

'*Ashrutaḥ*,'—illiterate. During the time that a brother is acquiring learning, if some other brother maintains the former's family with his wealth and labour, the latter should receive a share in whatever the former may acquire through his learning.—(*Dāyanirṇaya*, 14. 2. 10.)

62. बृहस्पति, 25. 82-83.] एकां स्त्रीं कारयेत् कर्म यथांशेन गृहे गृहे ।
बह्व्यः समांशतो देया दासानामप्ययं विधिः ॥

A single slave-girl shall be made to do work at the house of each coparcener, in accordance with their respective shares; if there are many slave-girls, they shall be divided equally. The same rule applies to male-slaves also.'—(*Bṛhaspati*, 25. 82-83.) [Quoted in *Parāsharamādhava*, p. 380.]

NOTES

If there is an odd number of slave-girls, they should be made to work, (at the houses of the several coparceners), by turns.—(*Parāsharamādhava*, p. 380.)

63. गौतम 28. 31.] अविद्याः समं विभजेरन्

Unlearned (coparceners) shall divide (their acquisitions) equally.—(Gautama, 28. 31.) [Quoted in *Vivādaratnākara*, p. 508; *Vibhāgasāra*, 9. 1—9.]

NOTES

'*Unlearned*,'—*i.e.*, not possessed of any such learning as would make the acquisition such as could belong specifically to the acquirer alone.—(*Vivādaratnākara*, p. 508.)

64. मनु 9. 205.] अविद्यानां तु सर्वेषामीहातो यद् धनं भवेत् ।
समस्तत्र विभागः स्यात् अपित्र्य इति धारणा ॥

If all the brothers are unlearned, and the property has been acquired by their labour,—the division shall be equal; the property being not ancestral. Such is the settled rule.—(Manu, 9. 205.) [Quoted in *Vivādaratnākara*, p. 507; *Vivādachandra*, 21. 2–9; *Vyavahāramayūhka*, p. 128; *Vibhāgasāra*, 9. 1—9.]

NOTES

'*Unlearned*,' *i.e.*, devoted to agriculture, trade, service of the king and so forth.— In this case, no attention is to be paid to the larger or smaller amount of property acquired by them individually. But even so, if one of them happens to acquire a very large property, that of course is not to be divided among others.—This text is in reality meant to be prohibitive of the 'preferential share' of the eldest brother.—If the difference in the properties acquired by them is small, then the shares shall be equal.—'*The property being not ancestral*,'—this clearly indicates that this same rule applies also to the case of a childless person.—(*Medhātithi.*)

If all of them are unlearned, and have acquired wealth by going about here and there, without any detriment to the paternal property; if the wealth has been acquired by trade and other means, with the paternal property, then no 'preferential share' is to be given to the eldest brother,—this is the meaning of the clause '*the property not being ancestral*.'—(*Sarvajña-nārāyaṇa.*)

If any wealth has been acquired by all the brothers by means of agriculture, trade, and such other means, then this wealth being the self-acquired property of the brothers,—and not ancestral,—it shall be divided equally among them; and in what is *not ancestral*, the eldest brother shall receive no 'preferential share.'—(*Kullūka.*)

If the brothers are devoid of learning and yet make an effort to acquire wealth,—its division shall be equal; in regard to all property other than the ancestral; in the case of the latter the division being unequal, there being a preferential share for the eldest brother. The sense is that those who have no learning and have made no efforts towards the acquiring of the wealth, shall have no share in that wealth. - (*Rāghavānanda.*)

'*Ihātaḥ*,'—by such efforts as agriculture and the like.—'*Apitrye*,'—*i.e.*, in the case of division not made by the father; in the case of division made by the father, unequal division has been permitted.—(*Nandana.*)

When all the brothers are unlearned and acquire wealth by agriculture and other means,—in this property, which is not ancestral, the division shall be equal, and no one shall be given a preferential share by reason of his having acquired a larger amount than the others.—(*Vivādaratnākara*, p. 508.)

Even when there is no ancestral property, if the unlearned brothers have acquired varying quantities of wealth, the division shall be equal; and one who may have acquired a larger amount shall *not* receive a larger share.—(*Vivādachandra*, 21. 2—9.)

'*Īhā*,'—Agriculture and other efforts.—'*Apitrye*,'—without the help of the ancestral property.—(*Vyavahāramayūkha*, p. 128.)

'*Īhā*,'—Agriculture and the like.—There is to be preferential share—such as the twentieth part and the like,—in this case.—(*Vibhāgasāra*, 9. 1—10.)

65. कात्यायन] पित्र्यं पितृणसम्बद्धमात्मीयं चात्मना कृतम् ।
ऋणमेवंविधं शोध्यं विभागे बन्धुभिः सह ॥

That incurred by the father,—that incurred by oneself in connection with the father's debts,—that incurred by oneself, all these debts should be cleared when there is partition among relatives.—(*Kātyāyana*.) [Quoted in *Vivādaratnākara*, p. 497.]

NOTES

'*Pitryam*'—that incurred by the father.—'*Pitṛṇasambaddham*,' that incurred by oneself for the purpose of paying off the father's debt.—'*Ātmīyam*,'—that incurred by oneself for the sake of the family.—(*Vivādaratnākara*, p. 497.)

66. नारद] पितुः [*v.l.*, पितृ] प्रसादात् सिध्यन्ति [*v.l.*, भुज्यन्ते] वस्त्राण्याभरणानि च ।
स्थावराणि न सिध्यन्ति [*v.l.*, स्थावरं तु न भुज्येत] प्रसादे पैतृके कृते ॥

Clothes and ornaments become exclusively one's own, through the father's favour; but even though the father's favour may be there, an immovable property does not become exclusively one's own.—(Nārada.) [Quoted in *Smṛtichandrikā*, p. 645; *Vīramitrodaya*, p. 709; *Smṛtitattva* II, p. 167; *Aparārka*, p. 730.]

NOTES

This provides an exception to the general rule that what had been given by the father to any one of the sons is not subject to partition among the sons.—(*Aparārka*, p. 30.)

The rule that there is to be no partition of what any one of the sons had received from the father as a mark of favour is not applicable to the case of immovable property.—(*Smṛtichandrikā*, p. 645.)

The first line means that there is to be no partition of what had been received by a son from the father as a mark of his favour.—'*Bhujyante*' (v.l., *siddhyanti*) means that it is impartible.—(*Vīramitrodaya*, p. 709.)

This refers to the grandfather's property; because, as regards the *self-acquired* property of the father,—even the *immovable* property that has been given by him to any one of his sons, would certainly remain the property of that son and could not be subject to partition.—(*Smṛtitattva* II, p. 167.)

67. कात्यायन] धर्मार्थं प्रीतिदत्तं च यच्चर्णं स्वनियोजितम् ।
तद् दृश्यमानं विभजेत् न दानं पैतृकाद् धनात् ॥

The debt that has been incurred (by a brother) for religious purposes, or for making a loving gift, or for his own benefit,—all this, on being known, shall be set aside (as to be paid wholly by the man who incurred it and not out of the joint stock); because there can be no gift out of an ancestral property (by any one coparcener on his own behalf).—(*Kātyāyana*.) [Quoted in *Vivādaratnākara*, p. 497.]

NOTES

The *Kalpataru* explains the meaning to be as follows: 'That part of the common property which a parcener has given away on his own behalf, either as a religious or an affectionate gift,—as also what he has advanced as loan,—when it becomes known, shall be partitioned; because it is not right that any brother should give away anything on his own behalf, out of the father's property (which is joint).'—According to *Prakāsha* and the *Pārijāta* the meaning is—'That debt which one has incurred as common debt, but for his own specific religious purposes,—that debt which he has incurred for making a loving gift to another person,—and that debt which he has incurred for his own (enjoyment),—all this debt, when definitely ascertained, should be separated, set aside; that is, it should be paid entirely by the man who incurred it; and it should not be paid out of the (joint) paternal property.'—In reality the text means all that is included in the two explanations.—(*Vivādaratnākara*, pp. 497-498.)

SECTION (2)

WHAT CANNOT BE DIVIDED

68. याज्ञवल्क्य 2. 118.] पितृद्रव्याविरोधेन [*v. l.*, विनाशेन] यदन्यत् स्वयमर्जितम् । मैत्रमौद्वाहिकं चैव दायादानां न तद् भवेत् ॥

[Among undivided coparceners] if, without drawing upon the paternal property, some one has, by himself, acquired some property, or a friendly gift, or a marriage gift,—all this shall not be shared by the coparceners.—(*Yājñavalkya*, 2. 118.) [Quoted in *Vivādaratnākara*, p. 501; *Smṛtichandrikā*, p. 641; *Parāsharamādhava*, p. 376; *Dāyabhāga*, pp. 106, 113; *Madanapārijāta*, p. 683; *Vīramitrodaya*, p. 707; *Vyavahāra-mayūkha*, p. 124.]

NOTES

'*Pitṛdravyasya avirodhēna*,'—without causing any detriment, and without drawing upon, the paternal property.—'*Svayam*,' by himself, alone.—'*Yadanyat*,'—whatever other additional property.—'*Maitram*,' what he may have obtained from a friend.—'*Audvāhikam*,'—what he may have obtained, in marriage from his father-in-law and others.—His coparceners shall have nothing to do with all this; *i.e.*, it shall not be partitioned; it shall remain the sole property of the person who has acquired it. To this same effect we have the texts of Manu and Kātyāyana.—(*Aparārka*.)

Among undivided brothers—if some property has been acquired by one, without detriment to the paternal property,—as also if something has been obtained from a friend, or in marriage,—all this shall not belong to the other coparceners. As regards '*friendly gifts*,' it is to be impartible, even when obtained by drawing upon the paternal property; others have held that it is only the friendly gift and the like that are impartible when obtained without drawing upon the paternal property. But this could not be right in regard to the marriage-gift, because the marriage is performed with the help of the common property.—(*Visvarūpa*).

Without drawing upon the property of the father and the mother, if property has been acquired by some one by himself,—also if something has been obtained from a friend, or at marriage,—all this shall not belong to the '*coparceners*,' *i.e.*, brothers.—The qualifying phrase '*pitṛdravyāvirodhēna*,' qualifies all the three:—(*a*) 'Friendly gift obtained without detriment to the paternal property,' (*b*) 'marriage-gift obtained without drawing upon the paternal property' and so on. In regard to (*a*), a friendly gift would be said to have been

obtained *with* detriment to the paternal property, if the gift were in return for some benefit previously conferred upon the friend out of the paternal property; (*b*) the marriage gift would be said to have been obtained by drawing upon the paternal property, when it would be received at the marriage performed in the *Āsura* and such other forms in which the marriage-fee will have been paid out of the paternal property. If the qualifying phrase 'without drawing upon the paternal property' were not meant to qualify all, then there would be no point in mentioning the 'friendly gift' and the 'marriage gift' in the present context. It might be argued that these have been added here with a view to show that these gifts are impartible even when obtained by drawing upon the paternal property. But this would be contrary to actual practice.—(*Mitākṣarā.*)

Without spending anything out of the parents' property, if some one acquires some property by such means as trade and the like,—so also what is obtained from a friend—and what is obtained in marriage,—all this should not be shared by the other 'coparceners,' *i.e.*, brothers and the rest. Here the reason for impartibility lies in the fact that the property has been obtained without the help of the paternal property;—so says the *Prakāsha*. But this is not right; as in that case there would be no need for mentioning the 'friendly gift' and the 'marriage gift' separately.—(*Vīramitrodaya Commentary on Yājñavalkya.*)

'*Anyat*'—some property other than the 'friendly gift' and the rest.—(*Vivādaratnākara*, p. 501.)

What has been obtained from friends and others is also impartible.—The exact meaning of this text has been made clear by Manu in the text—'*Anupaghnan pitṛdravyam shrameṇa yadupārjitan*, etc.' (9. 208; see below.)—'*Pitṛdravyam*' stands for joint property.—(*Smṛtichandrikā*, pp. 641-642.)

(*a*) What has been acquired by one by means of agriculture and such other means, without drawing upon the parental property,—(*b*) what has been obtained by learning, etc.,—and (*c*) what has been obtained by marriage,—all this does not belong to the brothers and other coparceners.—(*Parāsharamādhava*, p. 376.)

The mention of the 'friendly gift,' etc., is only by way of illustration; as it is in such acquisitions that there is no drawing upon the paternal property.—(*Dāyabhāga*, p. 106.)

'*Pitṛdravyāvirodhena*,'—*i.e.*, without any detriment to the paternal property; this to be construed with every one of the three kinds of acquisition mentioned, 'friendly gift' and the rest.—'*Maitram*,' obtained from friends;—'*Audvāhikam*,' obtained in marriage.—From what is said here it follows that the 'friendly gift' and the rest that may have been obtained by drawing upon the paternal property should be partitioned.—(*Madanapārijāta*, p. 684.)

'*Pitṛdravyāvirodhena*'—applies to all the three kinds of property mentioned here. If it were taken by itself, then the meaning would be that the friendly and other gifts that might have been obtained by drawing upon the paternal property are impartible; and this would be contrary to the practice of all respectable persons, and also to the declaration of Nārada—'*Kuṭumbam bibhriyād bhrātuḥ*, etc.'—(*Vīramitrodaya*, pp. 707-708.)

69. मनु 9.208 विष्णु 18. 42.] अनुपघ्नन् पितृद्रव्यं श्रमेण
यदुपार्जितम् [*v.l.*, र्जयेत्] ।
स्वयमीहितलब्धं तत् [*v.l.*, च] नाकामो दातुमर्हति ॥

If one of them acquires something by his own labour without drawing on the patrimony,—that property, being acquired by his own effort, he need not give to others, unless he himself wishes it. —(Manu, 9. 208; Viṣṇu, 18. 42.) [Quoted in *Aparārka*, p. 723; *Mitākṣarā*, p. 623; *Vivādaratnākara*, p. 501; *Vivādachintāmaṇi*, p. 211; *Parāsharamādhava*, p. 377; *Madanapārijāta*, p. 685; *Smṛtichandrikā*, pp. 642; *Dāyabhāga*, p. 105, 113; *Vīramitrodaya*, p. 708; *Vyavahāramayūkha*, p. 124; *Vibhāgasāra*, 9.1—7; *Dāyanirṇaya*, 14. 2—4.]

NOTES

The sharing of the gains of learning having been already precluded by a preceding verse (Manu, 9. 206), the present verse should be taken as laying down that one need not give what he himself acquires by agriculture and other means.—(*Medhātithi.*)

'*Shrameṇa*,'—by work involving much labour;—'*Svayamīhita*,' his own unaided effort;—'*Nākāmo dātumarhati*,' he may give what little he wishes to give; and there is no necessity for equal division. In what has been acquired without labour, there is to be equal division,—(*Sarvajñanārāyaṇa.*)

Without any detriment to the patrimony, whatever one acquires by laborious work in the shape of agriculture and the like, has been acquired by the man by his own effort; and hence he need not give it to his brothers.—(*Kullūka.*)

'*Anupaghnan*'—without drawing upon.—'*Īhitalabdham*,' acquired by learning.—(*Rāghavānanda.*)

'*Anupaghnan*,' not injuring, not drawing upon:—'*Shrameṇa*,' by agriculture and such means:—all other cases (where equal division has been declared) are those in which all the brothers have put forth some effort towards the acquisition; in the present case the acquisition has been due entirely to the effort of one man; hence there is no inconsistency.—(*Nandana.*)

'*Anupaghnan*,' not spending:—'*Svayamīhitalabdham*,' acquired by his own effort.—(*Rāmachandra.*)

'*Shrama*,' 'labour,' stands here for soldiering, agriculture and the like.—'*Īhā*' is effort not involving labour. [According to this there would be two kinds of property mentioned in the text: (1) what is obtained by laborious work and (2) what is obtained by one's own effort, not involving much labour.]—(*Aparārkā*, p. 723.)

'*Shrameṇa*,' by service, soldiering and the like. This text makes clear the sense of *Yājñavalkya*, 2. 118-119 (see 68, above.)—(*Mitākṣarā*, 8. 633-634, where the second line quoted is totally different '*Dāyādebhyo na tad dadyād vidyayā labdhameva cha.*'

'*Shrama*,' service, and the like.—'*Īhita*,' agriculture and the like. What is mentioned in the text is only illustrative, not exhaustive; the meaning is

that 'when a coparcener has acquired some property without drawing upon the paternal property, that property is the exclusive property of the person acquiring it.'—(*Vivādachintāmaṇi*, p. 211.)

'*Shramēṇa*,' by agriculture and the like.—The term '*pitṛ*,' stands for undivided coparceners in general.—(*Parāsharamādhava*, p. 377.)

'*Shramēṇa*,' by service, soldiering and the like.—(*Madanapārijāta*, p. 685.)

In this text Manu has made clear the meaning of Yājna. 2. 118. The term '*pitṛ*,' stands for undivided coparceners in general.—'*Shramēṇa*,' agriculture and such other means involving labour.—'*Anupaghnan*,' without causing injury to.—(*Smṛtichandrikā*, pp. 641-642.)

What has been acquired without drawing upon the paternal property has been declared by Manu and Viṣṇu to be impartible. Since the patrimony has not been drawn upon, the other coparceners have not helped the acquisition with money; and as the property has been acquired entirely by the man's own effort and labour, the others have not helped with bodily work either; hence what has been acquired must be the exclusive property of the person who has acquired it. '*Svayamīhitalabdham*,' this phrase states the ground for the property belonging to the acquirer only.—(*Dāyabhāga*, p. 105.)—'*Anupaghnan*' should qualify '*vidyādhana*' also; because it has been declared that if the acquiring of learning has involved expenditure out of the patrimony, the gains of that learning have to be divided.—(*Ibid*., p. 113.)

'*Shramēṇa*,'—by service and such other means.—(*Vīramitrodaya*, p. 708)

'*Shrama*' stands for *service* and such other means;—'*īhita*' is agriculture and the like; all this is merely illustrative; what is meant is that when a man has acquired something without the help of the joint property, it belongs to him absolutely.—(*Vibhāgasāra*, 9. 1—8.)

'*Labour*'—service and the like;—'by his own effort,'—such as agriculture.—(*Dāyanirṇaya*, 14.2—5.)

70. व्यास] अनाश्रित्य पितृद्रव्यं स्वशक्त्याऽऽप्नोति यद् धनम् ।
दायादेभ्यो न तद् दद्याद् विद्यालब्धं च यद् भवेत्
[*v.l.* विद्यया लब्धमेव च] ।

If a man has acquired property by his own power, without recourse to the paternal property,—he shall not give that to his coparceners;—so also what may have been acquired by learning.—(*Vyāsa*.) [Quoted in *Vivādaratnākara*, p. 502; *Vivādachintāmaṇi*, p. 211; *Smṛtichandrikā*, p. 642; *Dāyabhāga*, pp. 106, 113; *Smṛtitattva* II, p. 173; *Vyavahāramayūkha*, p. 125; *Vibhāgasāra*, 7. 1.—9.]

NOTES

The meaning is that if the learning by means of which the property has been acquired with the help of the joint property, then that property shall be

divided ; but if the joint property has not been used in the acquiring of learning, then the gains of that learning shall *not* be divided.—(*Vibhāgasāra*, 7. 1–11.)

The meaning is that 'what has been acquired without drawing upon the paternal property, as also what has been acquired by learning, – both of these are impartible. What has been acquired by learning is also impartible only when it has been acquired without drawing upon the common property ;– so says the *Prakāsha*.—But this is not right ; as in that case there would be no sense in mentioning both in the text.—It might be argued that "in view of the text of Nārada, *Vaidyo. vaidyāya, etc.* (see above), the property that has been acquired by learning also with the help of the paternal property should be regarded as partible."—True ; but that would be so only where, like the property, the learning itself has been acquired with the help of the paternal property. It is for this reason that when Kātyāyana declares the impartibility of the gains of learning, he prefaces it by the remark that the learning also should have been acquired without the help of the paternal property (*vide* texts. '*Parabhaktapradānena, etc., etc.*' above. –(*Vivādachintāmaṇi*, pp. 211-212.)

'*Anāshṛitya*,' 'without having recourse to,'—for the purpose of the acquisition.—The term '*pitṛ*' stands for undivided coparceners in general.—(*Smṛtichandrikā*, p. 642.)

Since the text has used the general term 'by his own powers,' it follows that all kinds of property that have been acquired by 'one's own energy' are the exclusive property of the acquirer himself ; so that all that has been acquired with the help of one's own self-acquired property, or by his own labour, is also his own exclusive property, and cannot be shared by his brothers. Inasmuch as even the 'gains of learning' that have been 'acquired by one's own power' have been to be such as has to be shared with those brothers who are either equal or superior to the acquirer in learning,—all that the addition of the 'what has been acquired by learning' in the present text can mean is the exclusion of such brothers as are either inferior to the acquirer in learning or entirely without learning.—(*Dāyabhāga*, p. 106.)—All that the texts like the present one mean is that 'one must share with the coparceners all that property which one may have acquired with the help of the common property'; the naming of 'valour' and the rest is meant only to be illustrative ; and for this reason there can be absolutely no authority for the view that "a property is common simply because it has been acquired by a member of an undivided (joint) family."—(*Ibid.*, pp. 114-115.)

71. मनु 9. 206.] विद्याधनं तु यद् यस्य तत्तस्यैव धनं भवेत् ।
मैत्रमौद्वाहिकं चैव माधुपर्किकमेव च ॥

The gains of learning shall be the sole property of the man by whom they have been acquired ; as also friendly presents, marriage-presents, and presents in consideration of priestly functions.—(Manu, 9. 206.) [Quoted in *Aparārka*, p. 724 ; *Vivādaratnākara*, p. 499 ; *Vivādachintāmaṇi*, p. 210 ; *Dāyabhāga*, pp. 106, 112, 120 ; *Vivādachandra*,

21. 1—9; *Vyavahāramayūkha*, p. 124; *Vibhāgasāra*, 7. 1–8.]

NOTES

'*Vidyā*'—Teaching, etc., as also proficiency in an art.—'*Maitram*' presents received from friends.—'*Audvāhikam*,' in the shape of dowry and the like. This stands for all that is received from the father-in-law's house. Others explain it as any presents that are received in connection with one's marriage.—'*Mādhuparkikam*,' in consideration of priestly functions. Though this also is included under 'gains of learning,' '*Vidyādhanam*,' yet it has been mentioned separately, because it is obtained by means of the special kind of work of officiating at sacrifices.—(*Medhātithi*.)

'*Vidyādhanam*'—The property acquired by means of learning; this refers to brothers.—'*Maitram*,' got from friends.—'*Audvāhikam*,' obtained from the wife's relatives.—'*Mādhuparkikam*,' obtained in connection with the honey-mixture and other offerings made to one by virtue of one's being an accomplished student.—(*Sarvajñanārāyaṇa*.)

Obtained by learning, friendship and marriage—what is obtained as a present at the time of the offering of honey-mixture. '*Tasyaiva bhavēt*,' shall be the sole property, etc., etc.—This is an exception to the general rule laid down in Manu, 9. 204 regarding the younger brothers being entitled to share in the property acquired hy the eldest brother after the death of the father.—'*Vidyādhana*,' 'gains of learning,' has been defined by Kātyāyana in the verse '*Parabhaktapradānēna*, etc.' (see below).—In view of this definition the explanation of the term '*Mādhuparkikam*' as 'what is obtained in consideration of priestly functions'—as provided by Medhātithi and Govindarāja—cannot be accepted; as that would be included under '*Vidyādhana*.'—(*Kullūka*.)

What is stated here is that even though the brothers may not be separated, what any one of them acquires by means of learning and other means shall not be divided. There are seven kinds of '*Vidyādhana*' (see Kātyāyana below) . . . '*Mādhuparkikam*,' silver plates and other things received in connection with the honey-mixture-offering.—(*Rāghavānanda*.)

'*Vidyādhanam*,'—what has been obtained by means of teaching and arts. '*Maitram*,' obtained from friends.—'*Audvāhikam*,' obtained at the time of marriage.—' '*Mādhuparkikam*,' obtained at the time of the honey-mixture-offering.—(*Nandana*.)

What one has acquired by means of learning shall not be given to the coparcener.—(*Aparārka*, p. 724.)

'*Maitram*,'—what is obtained from friends.—'*Mādhuparkikam*,' obtained as a present of honour at the time of the honey-mixture-offering.—'*Tasyaiva bhavēt*,'—*i.e.*, shall be impartible.—(*Vivādaratnākara*, p. 499.)

'*Maitram*,'—what is received as a token of respect from friends;—'*Mādhuparkikam*'—the *Arhaṇā*, offering of vessels, etc., received along with the honey-mixture.—(*Vivādachintāmaṇi*, pp. 210-211.)

Presents of friendship shall not be divided.—(*Vivādachandra*, 21. 1–9.)

'*Maitram*'—received from a friend as present.—'*Mādhuparkikam*,' the presents received at reception (*Arhaṇa*) and on other occasions.—(*Vibhāgasāra*, 7. 1—8.)

72. गौतम 28. 28.] स्वयमर्जितमवैद्येभ्यो वैद्यो नाकामो दद्यात् ।
[*v.l.*, (*a*) स्वयमर्जितं चैव वैद्येभ्यः वैद्यः कामं दद्यात् ।
(*b*) स्वयमर्जितमवैद्येभ्यो वैद्यः कामं न दद्यात् ।]

The learned man shall not give his self-acquired property to his unlearned coparceners, unless he wishes to do so. [*v.l.*—The learned man shall give his self-acquired property to his learned coparceners, if he so wishes.]—(*Gautama*, 28. 28.) [Quoted in *Vivādaratnākara*, p. 500; *Parāsharamādhava*, p. 378; *Dāyabhāga*, p. 108.]

NOTES

'*Self-acquired*,'—*i.e.*, acquired through learning.—'*Vaidyaḥ*'—one endowed with learning.—(*Vivādaratnākara*, p. 500.)

Gautama here lays down that even out of the impartible gains of learning shares may be given to coparceners, by the desire of the acquirer.—(*Parāsharamādhava*, p. 378, where the second reading noted above has been adopted.)

What one has acquired with the help of his own property, or by his own bodily exertion, he shall not, unless he so wishes it, give to his *unlearned* coparceners,—but he must give it to the learned ones. This refers only to the 'gains of learning.'—(*Dāyabhāga*, p. 108, which has adopted the third reading noted above.)

73. नारद 13. 11.] वैद्योऽविद्याय नाकामो दद्यादंशं स्वतो धनात् ।
पित्र्यं द्रव्यं समाश्रित्य न चेद् तेन तदाहृतम् ॥

A learned man may not give, against his will, a share in his self-acquired property to the unlearned coparcener, unless it have been obtained with the help of the paternal property.—(*Nārada*, 13. 11.) [Quoted in *Aparārka*, p. 725; *Vivādaratnākara*, p. 500; *Vivādachintāmaṇi*, p. 211; *Smṛtichandrikā*, p. 639; *Parāsharamādhava*, p. 378; *Vivādachandra*, 21. 2—10; *Vyavahāramayūkha*, p. 127; *Dāyabhāga*, p. 108; *Vibhāgasāra*, 7. 1—6; *Dāyanirṇaya*, 14. 2—5.]

NOTES

The meaning is as follows :—(*a*) If a man, who has acquired learning while maintaining himself with food and clothing supplied out of the joint property, acquires wealth without the help of the joint property,—then, he shall not give any share out of it to an unlearned coparcener ;—(*b*) but if the 'gain of learning' has been obtained with the help of the joint property, then a share in it has to be given to the unlearned coparcener also ;—(*c*) if the joint property has not been drawn upon during the time of the acquiring of learning, then no share need be given to any one else, even though at the time of the acquiring of the property itself the joint property may have been used ; in this case it belongs to the learned man only ; this follows from the fact that Vyāsa also, having declared the impartibility of what has been acquired by a coparcener without any help of the paternal property, has added the 'gain of learning' separately as not to be partitioned. It is for this reason that the impartibility of the 'gains of learning,' which is going to be spoken of later on, has to be taken as referring to that case where the learning has been acquired by the man with the help of his own exclusive property, though at the time of the acquiring of the property, the joint property has been used. Such is the opinion of Halāyudha also. The author of the *Prakāsha* and others however have explained all those texts that speak of 'gains of learning' (to be impartible) as pertaining to cases where the paternal property has not been drawn upon. But this is not right ; as in that case, there would be no sense in the mention of both.—(*Vivādaratnākara*, pp. 500-501.)

It might be argued that "this text of Nārada indicates that even the property acquired by learning has to be divided, if it has been acquired with the help of the paternal property." This is true ; but only in those cases where, the joint property has been drawn upon in the acquiring of *learning*, as well as in the acquirement of the *property*.—(*Vivādachintāmaṇi*, pp. 211-212.)

The meaning is that the learned man is not to give a share, against his will. The 'property' mentioned in the first line is to be understood as that property acquired by learning which is impartible.—(*Smṛtichandrikā*, p. 641.)

This refers to cases where the acquirer is unwilling to give a share.—(*Parāsharamādhava*, p. 378.)

The implication of this text is that the division is to be equal between two *learned* coparceners, even though the amounts of wealth acquired by them may be unequal.—(*Vivādachandra*, 21. 2—10.)

This prohibition (of partibility) is meant for those cases where the brothers have other property. If they have no other property, then a share has to be given to them also—says *Madana*.—(*Vyavahāramayūkha*, p. 127.)

'*Pitryam dravyam*' here stands for common property ; if the 'gains of learning' have not been acquired with the help of the common property, then the learned shall not give it to the unlearned ; but to the learned, he must give it,—even when it has been acquired without the help of the common property.—(*Dāyabhāga*, p. 108.)

The implication is that if the 'gains of learning' have been mixed up with the other property, then it has to be given ;—and if a coparcener, even though

learned, has not earned anything,—then he also should not be allowed to share in the gains of learning of another.—(*Vibhāgasāra*, 7. 1—7.)

The law on this point is briefly this:—Where the property concerned has been acquired by a co-sharer with the help of the ancestral property, through soldiering, trade and such other means, or by learning—that property shall be divided equally among all brothers, the acquirer himself receiving a double share.—(*Dāyanirṇaya*, 14. 2—6.)

74. कात्यायन] नाविद्यानां तु वैद्येन देयं विद्याधनं [*v.l.*, धनात्] क्वचित् ।
समविद्याधिकानां तु [*v.l.*, स्वसमानाधिकविद्यानां]
देयं वैद्येन तद्धनम् ॥

In no case shall the *wealth gained by learning* be given by the learned to the unlearned; that wealth shall be given by the learned to those who may be equal or superior to him in learning.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 725; *Vivādaratnākara*, p. 500; *Smṛtichandrikā*, p. 639; *Parāsharamādhava*, p. 379; *Dāyabhāga*, p. 108; *Smṛtitattva* II, p. 174; *Vyavahāramayūkha*, p. 126; *Vibhāgasāra*, 7. 2—9; *Dāyanirṇaya*, 14. 2—8.]

NOTES

'*In no case shall it be given to the unlearned ones*,'—*i.e.*, even if the learned earner be willing to give it, he shall not do so.—(*Smṛtichandrikā*, p. 639.)

Even though the learned earner be willing to give a share to the unlearned, he shall not do so.—(*Parāsharamādhava*, p. 379.)

The term '*vidyā*' (in the second line), occurring as it does, between the two terms '*sama*' and '*adhika*,' is related to both these terms; the sense being that shares are to be given to those only who are either equal or superior to the earner in learning, not to those who may be either inferior to him in learning or not possessed of any learning at all.—(*Dāyabhāga*, p. 109.)

The term '*vidyā*' is to be construed with both the terms '*sama*' and '*adhika*'; hence the meaning is that shares are to be given to those who may be equal or superior to the earner in learning, and not to those who may be either inferior to him or entirely devoid of learning.—'*Vaidyena*,' by the learned.—(*Smṛtitattva* II, p. 174.)

To one of superior or equal learning, it is not to be given as a *gift*; what is meant is that the gains of the two persons shall be pooled together.—A man If possessing only a little wealth, has acquired much wealth by means of his learning, he shall receive a large share, as being the acquirer.—(*Vibhāgasāra*, 7. 2—10.)

This means that in a case where the additional property has been acquired through learning, without the help of the patrimony, the acquirer should give a share out of it to such of his co-sharers as are either superior or equal to him in that learning.—'*Vaidyena*,' by the learned.—(*Dāyanirṇaya*, 14. 2—8.)

75. व्यास] विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत् ।
विभागकाले तत् तस्य नान्वेष्टव्यं स्वरिक्थिभिः ॥

What is obtained by learning, wealth obtained by valour, and loving gifts,—these shall not be sought after by one's co-parceners at the time of partition.—(*Vyāsa.*) [Quoted in *Aparārka*, p. 725; *Vivādaratnākara*, p. 499; *Smṛtichandrikā*, p. 636; *Parāsharamādhava*, p. 377; *Dāyabhāga*, pp. 106, 113; *Vyavahāramayūkha*, p. 124.]

NOTES

'*Shauryadhanam*'—wealth obtained in war;—('*Saudāyikam*'—this has been defined by Kātyāyana in the text '*ūḍhayā kanyayā vāpi, etc.*'—(*Vivādaratnākara*, p. 500.)

The term '*vidyāprāpta*' does not stand for what may be obtained by any kind of learning, but for what is obtained by a special kind of learning.—This sums up in brief all those various kinds of property that are acquired by means of various forms of learning,—all which are impartible.—(*Smṛtichandrikā*, p. 637.)

'*Saudāyikam*' is the gift that one receives, as a mark of favour, from one's father, grandfather and other loving relatives.—(*Dāyabhāga*, p. 106; also 113.)

This must be taken as referring to such property as has been acquired without detriment to the paternal property.—(*Vyavahāramayūkha*, p. 124.)

76. प्रजापति] विद्याशौर्यश्रमैर्लब्धं स्त्रीधनं माधुपर्किकम् ।
मैत्रमौद्वाहिकं भ्रातुर्भ्रातृभिर्न विभज्यते ॥

What has been acquired by learning or valour or labour, wealth obtained along with the wife, presents received in consideration of priestly services, friendly presents, marriage-presents,—these properties of a brother are not partitioned among other brothers.—(*Prajāpati.*) [Quoted in *Smṛtichandrikā*, p. 642.]

NOTES

'*Shrama,*'—'*Labour,*' stands for agriculture and such other operations.—(*Smṛtichandrikā*, p. 642.)

77. नारद 13. 6.] शौर्यभार्याधने चोभे [*v.l.*, धने हित्वा] यच्च विद्याधनं भवेत् ।
त्रीण्येतान्यविभाज्यानि प्रसादो [*v.l.*, प्रासादो] यश्च पैतृकः ॥

Property acquired by bravery, marriage-portion, and gains of learning,—these three are impartible ; as also the favour conferred by the father [*v.l.*, "paternal house"].—(*Nārada*, 13. 6.) [Quoted in *Aparārka*, p. 730 ; *Mitākṣarā*, p. 605; *Vivādaratnākara*, p. 501; *Vivādachandra*, 21. 1–10 *Dāyabhāga*, pp. 107, 113 ; *Smṛtitattva* II, p. 175 ; *Vyavahāramayūkha*, p. 127 ; *Dāyanirṇaya*, 15. 1–5.]

NOTES

Here we have the prohibition of the partition of what has been obtained by a brother as a mark of favour (a loving gift) from the father, before partition.—(*Mitākṣarā*, p. 605.)

Property acquired by valour is impartible. (*Vivādachandra*, 21.1 10.)

'*Bhāryādhana*' is the property obtained by one at the time of obtaining his wife, *i.e.*, marriage-portion. With the exception of those mentioned here, the rest shall be partitioned.—(*Dāyabhāga*, p. 107.)

In view of the words of Bharadvāja—'what has been obtained along with the wife,'—the term '*bhāryādhana*' should be taken here as standing for the wealth obtained at the time of taking a wife, *i.e.*, marriage-portion. If in place of '*chobhe*,' we adopt the reading '*hitvā*,' the construction would be 'excepting these three the rest shall be partitioned, so that these three are impartible.'—(*Smṛtitattva* II, p. 175.)

The meaning is that (1) what is acquired by learning, (2) the marriage-portion, (3) the gains of learning, these three are impartible : and so also is (4) the paternal house (reading '*prāsāda*' for '*prasāda*'). '*Bhāryādhanam*' stands for the *Dowry*. (*Dāyanirṇaya*, 15. 1—6.)

78. कात्यायन] शौर्यप्राप्तं विद्यया च स्त्रीधनं चैव यत् स्मृतम् ।
एतत् सर्वं विभागे तु न च वैभाज्यमर्थिभिः ॥
विवाहकाले यत् किंचिद् वरायोद्दिश्य दीयते ।
कन्यायास्तद् धनं सर्वमविभाज्यं तु बन्धुभिः ॥

What has been obtained by valour, or by learning, and what has been declared to be *Strīdhana*,—at the time of partition all this shall not be partitioned by the coparceners. Whatever is given to the bridegroom at the time of marriage has been declared to be the *property of the girl*, and all that is not to be partitioned by his relatives.—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 641 ; *Parāsharamādhava*, p. 379 ; *Dāyabhāga*, p. 75 ; *Aparārka*, p. 751 ; *Vivādachandra*, 23. 2.1 ; *Dāyanirṇaya*, 11. 1-2.]

NOTES

See IV. 20.

This lays down the impartibility of all kinds of '*Strīdhana*.'—(*Smṛtichandrikā*, p. 641.)

Like the 'gains of learning,' wealth obtained by valour and other means also is impartible.—(*Parāsharamādhava*, p. 379.)

'*Uddishya*'—*i.e.*, what is given to the bridegroom with special reference to the bride—'this that I give shall belong to the girl'; the rule will not apply where there has been no such intention. Hence it is that the phrase '*at the time of marriage*' is only illustrative; it is not meant that the rule is applicable to only such things as are actually given at the time of marriage: in fact, whenever it is given, if it is given with the said intention, it comes under this rule.—(*Dāyabhāga*, p. 75.)

'*Given to the bridegroom*,'—with the understanding that what is given shall belong to the girl;—this does not apply to such gifts to the bridegroom as are not made with this understanding.—(*Dāyānirṇaya*, 11. 1—3.)

79. कात्यायन] यल्लब्धं दान [*v.l.*, 'लाभ', 'लग्न'] काले तु सजात्या कन्यया सह ।
कन्यागतं तु तद्वित्तं शुद्धं [*v.l.*, शुल्कं] वृद्धिकरं स्मृतम् ।
वैवाहिकं तु तद् विद्यात् भार्यया यत् सहागतम् ।

Whatever has been obtained at the time of marriage, along with the girl of one's own caste, is the *property obtained with the girl*,—pure and [*v. l.*, it is called *dowry*] conducive to prosperity. Whatever has come along with the wife is to be known as '*marriage-portion*.'—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, pp. 640-641; *Aparārka*, pp. 723-724; *Vivādaratnākara*, p. 503; *Vivādachandra*, 21. 2. 5-6; *Vyavahāramayūkha*, p. 128; *Dāyabhāga*, p. 126; *Vivādachintāmaṇi*, p. 213.]

NOTES

These texts supply the definitions of '*Kanyāgata*' (obtained with the girl) and '*Vaivāhika*' (marriage-portion). '*Kanyāgatam*'—what has come along with the girl.—(*Smṛtichandrikā*, pp. 640-641.)

These texts describe that kind of 'marriage-portion,' which is not 'common' property.—(*Vivādaratnākara*, p. 503.)

The term '*Vaivāhikam*' 'marriage-portion,' does not stand for only that which is given to the man by his father-in-law; it has a technical signification, made clear in these texts.—(*Vivādachandra*, 21. 2—5, 6.)

'*Kanyāgatam*' is what has been obtained in marriage, in the manner described in such rules as 'That is the *Ārṣa* form of marriage in which the bride's father receives a pair of bullocks' and so forth (*Yājña.*, 1. 59). Here also,

the property in question would be impartible, like 'gains of learning,' only if it involved no injury to the paternal property.—(*Vyavahāramayūkha*, p. 128.)

'*Bhāryayā sahāgatum*'—obtained at the time of marriage.—(*Dāyabhāga*, p. 126.)

Here Kātyāyana describes that 'marriage-portion' which is not 'common' property.—(*Vivādachintāmaṇi*, p. 213.)

80. कात्यायन] परभक्तोपयोगेन विद्या प्राप्ताऽन्यतस्तु या ।
[*v.l.*, परभक्तप्रदानेन प्राप्तविद्यो यदन्यतः]
तया प्राप्तं तु यद्वित्तं विद्याप्राप्तं [*v.l.*, विद्याधनं] तदुच्यते ॥

Where a man has acquired learning from others (strangers), while living upon food supplied by others,—whatever he obtains by means of that learning is called *gains of learning*.—(*Kātyāyana*.) [Quoted in *Aparārka* p. 724; *Mitākṣarā*, p. 632; *Vivādaratnākara*, p. 502; *Vivādachintāmaṇi*, p. 212; *Smṛtichandrikā*, p. 637; *Parāsharamādhava*, p. 377; *Vivādachandra*, 21. 2. 1-2; *Madanapārijāta*, p. 685; *Vīramitrodaya*, p. 708; *Smṛtitattva* II, p. 174; *Vyavahāramayūkha*, p. 125; *Vibhāgasāra*, 7. 2. 1; *Dāyanirṇaya*, 15. 1-2.]

NOTES

'*Bhakta*,' food;—'*Anyataḥ*'—from a person other than the father.—(*Aparārka*, p. 724.)

In this Kātyāyana provides the definition of that 'gains of learning' which is impartible (*Mitākṣarā*, p. 632).—'*Parabhaktopayogena*,' by living on food given by persons other than the father and others;—'*anyataḥ*'—from persons other than the father and the rest. Thus the meaning is that 'that gain of learning is impartible which has been obtained by means of that learning which has been acquired without drawing upon the paternal property.'—(*Bālambhaṭṭī*.)

The terms '*para*' and '*anya*' here stand for any persons other than the members of that particular joint family;—the term '*bhakta*' is used in the sense of things in general. In the acquisition of property by learning, the means and methods are of various kinds; and the property acquired also would be of various kinds; and all this is impartible.—(*Smṛtichandrikā*, p. 686.)

The 'gains of learning' which are meant to be impartible are those obtained by that learning which has been acquired without drawing upon the family-property; hence what has been obtained by learning acquired with the help of food supplied from the family is to be divided.—(*Vivādachandra*, 21. 2. 1-2.)

Here Kātyāyana provides a definition of that 'gains of learning' which is impartible.—(*Viramitrodaya*, p. 708.)

'*Anyataḥ*'- from persons other than those belonging to one's paternal and maternal families.—(*Smṛtitattva* II, p. 174.)

Kātyāyana describes '*Vidyādhana*.'—(*Vyavahāramayūkha*, p. 125.)

In a case where learning has been acquired with the help of the joint property, the gains of learning shall be divided; but in a case where no help has been taken from the joint property the gains of learning shall not be divided. That is to say, when the property in question has been acquired by learning which was acquired by the man from a stranger and while he was living on food supplied by a stranger,—then it shall not be divided; but if in course of his education, the man has lived on food supplied by the family, and has learnt the sciences from his father and other relatives, then the property in question shall be divided. The 'learning' meant here is the knowledge of weapons and of the sciences. The 'gains of learning' have been defined by Kātyāyana himself in the texts '*Upanyastena yallabdham*, etc.' (next sec.)—What is meant by this being 'impartible' is that it can be partitioned only if the acquirer wishes it to be so, not otherwise.—(*Vibhāgasāra*, 7. 2-3.)

'*From others*,'—*i.e.*, from persons other than the father and the uncle. If such learning has been acquired without drawing upon the patrimony, it should be shared by such brothers as are superior or equal to the acquirer in that learning.—(*Dāyanirṇaya*, 15. 1—3.)

81. कात्यायन](A) उपन्यस्तेन [*v. l.*, तु] यल्लब्धं विद्यया पणपूर्वकम् ।
विद्याधनं तु तद् विद्यात् विभागे न विभज्यते
[*v. l.*, नियोजयेत्] ।

(B) शिष्यादार्त्विज्यतः [*v. l.*, दाचार्यतः] प्रश्नात् सन्दिग्ध-
प्रश्ननिर्णयात् ।
स्वज्ञान [*v. l.*, अज्ञान] शंसनाद् वादात् लब्धं प्राध्य-
यनाच्च यत् ।
विद्याधनं तु तत् प्राहुः विभागे न विभज्यते [*v.l.*, नियोजयेत्]

(C) शिल्पिष्वपि हि धर्मोऽयं, मूल्याद् यच्चाधिकं भवेत् ।
विद्याप्रतिज्ञया लब्धमेतद् विद्याधनं विदुः ।

(D) परं निरस्य यल्लब्धं विद्यया [*v. l.*, विद्यातो] द्यूतपूर्वकम् ।
विद्याधनं तु तद् विद्यात् न विभाज्यं बृहस्पतिः ॥

(E) आर्त्विज्यन्यायेन यत्लब्धमेतद् विद्याधनं भृगुः ।
विद्याबल [*v. l.*, पण] कृतं चैव याज्यतः शिष्यतस्तथा ।

(F) एतद् विद्याधनं प्राहुः सामान्यं यदतोऽन्यथा ॥

(A) What one has acquired by his learning on an occasion of a difficult problem being propounded for discussion, with a

wager, is called the *Gains of Learning*; it is not divided at the time of partition.—(B) What is obtained from a pupil, or from officiating at sacrifices, or from the propounding of a problem, or from the answering of a difficult problem, or from an exhibition of one's knowledge, or from disputation, or from one's superior learning, is called *Gains of Learning*; and it is not divided at the time of partition.—(C) This same law holds in the case of artists: whatever is obtained (as prize) in addition to the price (of the manufactured article), and what is obtained by the assertion of one's skill is called *Gains of Learning*.—(D) What has been obtained on vanquishing an adversary in a wagered debate is called *Gains of Learning*, and is not partible, says Bṛhaspati.—(E) What is obtained by supervising sacrificial performances is called *Gains of Learning*, says Bhṛgu.—(F) What is obtained by the force of one's learning, or from a person for whom one officiates as priest, or from a pupil, is called *Gains of Learning*. Property other than this is common.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 724; *Vivādaratnākara*, p. 502; *Parāsharamādhava*, p. 377; *Vivādachintāmaṇi*, p. 212; *Smṛtichandrikā*, p. 637; *Vivādachandra*, 21. 2-1; *Dāyabhāga*, p. 123; *Smṛtitattva* II, p. 173; *Vyavahāramayūkha*, p. 125; *Rāghavānanda* on Manu, 9. 20.]

NOTES

'*Prādhyayanāt*,' superior study.—'*Mūlyād yachchadhikam bhavet*, that excess over the proper price which is obtained by reason of the increase in the number of buyers, belongs to the artist exclusively.—'*Vidyāpaṇakṛtam*,' what is obtained in such wagers as 'In reciting this chapter, or in carrying on this discussion, no mistake is to be committed,—is also the exclusive property of the earner.—'*Vidyāpratijñayā*,'—what is obtained by such assertions as 'I alone know this Science.'—(*Vivādaratnākara*. p. 503.)

Kātyāyana provides the definition of that '*Vidyādhana*,' 'gains of learning,' which is impartible; the sense being that what is other than this is the common property of all undivided coparceners.—(*Parāsharamādhava*, p. 378.)

'*Ārtvijyataḥ*,'—from being appointed to officiate at sacrifices and so forth.—'*Prashnāt*,' by propounding a question.—'*Prashnanirṇayāt*,'—'by the solution of a question.'—*Prādhyayanāt*,' by vastness of learning. What is obtained by means of the arts is also to be treated as 'gains of learning.'—When the vendor has sold something to a person for a small price, if the vendee obtains for the article a higher price, the excess thus obtained will be his exclusive property. '*Vidyāpratijñayā*,'—by such assertion as 'I alone know this Science' and the like.—(*Vivādachintāmaṇi*, pp. 212-213.)

'*Upanyaste*'—in what is propounded as a problem in the form of the dropping of a *varga* (section)—'*Shiṣyāt*,'—by teaching.—'*Ārtvijyataḥ*,'—by officiating at Sacrifices.—'*Prashnāt*,'—by propounding questions regarding the proper expiation for minor sins.—'*Sandigdhaprashnanirṇayāt*,'—by deciding the questions and cross-questions propounded by plaintiffs and defendants.—'*Svajñanashamsanāt*,'—exhibiting one's learning on occasions of public honouring.—'*Vādāt*,'—by discussions, wranglings and the like.—'*Prādhyayanāt*'—by reciting by the time.—'*Vidyātaḥ*,'—by such knowledge as that pertaining to dice and the like.—'*Vidyāpratijñayā*,' by asserting one's vast learning.—'*Shiṣyādāptam*,'—obtained from the pupil by way of offering to the Teacher,—*Ṛtviiṅnyāyena yat labdham*,' what has been obtained by supervising sacrificial performances.—'*Shilpiṣu*,' Among people who make a living by the arts also.—'*Dharmaḥ asti*,' this same law regarding the division of 'gains of learning' obtains.—'*Mulyāt yad adhikam*,' the excess of wealth that is obtained by salary for carrying on paid teaching work.—'*Vīdyābalakṛtam*,' the special presents received by virtue of one's vastness of learning. '*Yājyataḥ Shiṣyataḥ*' —obtained as offering from them—This is what has been called 'gains of learning,' which forms one's exclusive property. Hence only that property is common to all undivided coparceners which has been acquired with the help of the ancestral property, and which is not 'the gains of learning.'—(*Smṛtichandrikā*, pp. 637-638.)

'*Upanyastē*,'—"if you are able to put forward a '*bhadraka*,' I shall pay you so much," on being thus challenged, if one answers it successfully and thus wins the wager.—'*Shīṣyāt*,' from the pupil one has taught.—'*Ārtvijyataḥ*,' from the person for whom one has officiated at a sacrifice, what one has obtained as 'sacrificial fee' and such presents: the sacrificial fee is not a *gift*, being as it is payment for work done.—Also what has been earned as a reward, in solving problems propounded in literary debate, even without a wager; for example, some one asserts 'in this literary debate, if any one answers my question, I shall give him this gold;—if some one answers the question and removes the doubt, and obtains the gold; or when two disputants have approached him for the purpose of settling their dispute, and he settles it to their satisfaction and obtains his reward in the shape of the sixth part of the subject of dispute and the like.—Also what one obtains as gift by exhibiting his superior knowledge of the sciences;—also when there is a discussion on some scientific subject between two persons, and the one who wins and thereby obtains a reward.—When from among several persons, one comes out as having acquired most excellent learning, and obtains the consequent rewards.—Also what is obtained by means of their art by painters, goldsmiths, and the like.—Also what one has earned by gambling.—All this is such as cannot be shared by others.—The upshot is that by whatever learning or science one obtains property, that property belongs exclusively to the earner himself.—(*Dāyabhāga*, pp. 123-124; and *Smṛtitattva* II, p. 178.)

'*Upanyāsa*,'—is the reciting of all the forms of Vedic recitation; *Krama*, *Jaṭā* and the rest,—says the *Madanaratna*; others explain it as the propounding of a difficult problem in an assembly.—'*Paṇapūrvakam*' is an adverb modifying '*upanyastē*.'—'*Shamsanam*,' exhibition.—'*Prādhyayanam*,' excellent learning.—'*Shilpisvapi*'—The law relating to the gains of learning

is applicable to artists also.—'*Mulyāt yad adhikam*,' by way of reward.—'*Ṛitvinnyāya*' is mentioned by way of illustration. In all these, if there has been no drawing upon the paternal property,—either in the acquiring of the learning, or in the acquiring of wealth by that learning,—then alone is such property impartible; it is certainly partible, if there has been drawing upon the paternal property.—(*Vyavahāramayūkha*, pp. 125-126.)

There are seven kinds of 'gains of learning': (1) '*Ārtvijyataḥ*,'—by officiating at sacrifices;—(2) '*Prashnāt*'—by pleasing the giver with questions;—(3) '*Ajñānashamsanāt*' (which is another reading for *svajñānashamsanāt*'), by refuting ignorance;—(4) '*Prādhyayanāt*,' by the excellence acquired by means of learning; and so forth.—(*Rāghavānanda* or *Manu*, 9. 206.)

82. कात्यायन](A) आस्थाय संशयं यत्र प्रसभं कर्म कुर्वते ।
तस्मिन् कर्मणि तुष्टेन प्रसादः स्वामिना कृतः ॥
तत्र लब्धं तु यत् किञ्चित् धनं शौर्येण तद् भवेत् ।
(B) ध्वजाहृतं भवेद् यत्तु विभाज्यं नैव तत् स्मृतम् ॥
संग्रामादाहृतं यत्तु विद्राव्य [*v.l.*, विजित्य] द्विषतां बलम् ।
स्वाम्यर्थं जीवितं त्यक्त्वा तद् ध्वजाहृतमुच्यते ॥

(A) Having placed one's self in danger, when one does a daring act, in consequence of which a favour is bestowed upon by him by his master,—what one obtains in this manner is *obtained by valour*.

(B) What is *obtained in battle* (*Dhvajāhṛtam*) has been declared to be impartible, it being that wealth which one wins in battle, after having set to flight the army of the enemy and endangering one's life for the sake of one's master.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 725; *Vivādaratnākara*, p. 503; *Vivādachintāmaṇi*, p. 213; *Smṛtichandrikā*, pp. 639-640; *Parāsharamādhava*, p. 379; *Vivādachandra*, 21. 2—4; *Dāyabhāga*, p. 126; *Vyavahāramayūkha*, p. 127.]

NOTES.

This describes what sort of 'wealth acquired by valour' is impartible.—(*Vivādaratnākara*, p. 503; also *Vivādachintāmaṇi*, p. 213, where the texts are attributed to Manu.)

The text (A) defines the 'wealth acquired by valour.'—'*Prasabha*' is *force*. The text (B) describes another kind of impartible property; the latter also has been included by Vyāsa under 'wealth acquired by valour,' as it is only a particular form of this latter. Kātyāyana has mentioned it separately

only with a view to explain things in greater detail. Here also what makes the property impartible is the fact that it has been acquired without the help of any property belonging to one conjointly with the father and others.—(*Smṛti-chandrikā*, pp. 639-640.)

The exact nature of 'wealth acquired by valour' has been indicated by Kātyāyana in the text (A).

The term '*Vidyādhana*' stands, not only for what has been acquired by means of *learning*, but also what has been acquired in the manner described in these texts.—(*Vivādachandra*, 21. 2—4.)

Here Kātyāyana makes a distinction between '*Shauryadhana*' and '*Dhvajāhṛta*; other writers do not make this distinction.—(*Vyavahāramayūkha*, p. 214, Kane's *note*.)

83. मनु 9. 29.] वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः ।
also विष्णु 18. 44.] योगक्षेमं प्रचारं च [*v.l.*, योगक्षेमप्रचारश्च] न विभाज्यं प्रचक्षते ॥

A cloth, a conveyance [or what has been entered in a document as meant for religious purposes], an ornament, cooked food, water, women, what is conducive to wealth and welfare, pasture-ground (or path),—these they declare to be impartible.—(Manu, 9. 219.) [Quoted in *Aparārka*, p. 725 ; *Mitākṣarā*, p. 637 ; *Vivādaratnākara*, p. 504 ; *Madanapārijāta*, p. 685 ; *Parāsharamādhava*, p. 380 ; *Smṛtichandrikā*, p. 643 ; *Dāyabhāga*, pp. 126-127 ; *Vīramitrodaya*, p. 708 ; *Vyavahāra-mayūkha*, p. 128 ; *Dāyanirṇaya*, 15. 1—8.]

NOTES

The singular number in '*vastram*' and the rest is meant to be emphasised ; [that is, what are meant are a *single piece of cloth*, a *single conveyance*, a *single ornament*].—'*Patram*,' vehicle, such as a chariot, a cart and so forth.—'*Vastram*'—cloth, of ordinary quality, not what is exceptionally valuable.—'*Udakam*'—a well or a tank.—'*Striyaḥ*'—women, *i.e.*, female slaves.—'*Yogakṣemam*'—what is conducive to welfare, *i.e.*, experienced minister, priest, councillor and the like. These are helpful in protecting the household. In another '*Smṛti*' the 'dwelling house' is also excluded from partition.—'*Prachāram*' where the cattle graze. From this it would follow that it is not absolutely true that 'there is nothing wrong in dividing whatever has been left by the father.' But this prohibition is of that kind of which a transgression involves no sin.—(*Medhātithi.*)

'*Vastram*' the cloth that may be worn by individuals, even though it may appear to be excessive.—'*Patram*' the horse and such vehicles, which are being used by individual members.—Similarly 'ornament' like the ring.—

'*Kṛtānnam*,' food that may have been cooked for particular individuals, even though it be of a quality different from others.—'*Udakam*,' well and the like.—'*Striyaḥ*,' wives; even though there be such inequalities, as one man has one wife, while another has two and so forth.—'*Yogakṣemam*,'—*Yoga* stands for lands and other properties acquired by one from the king and such other sources, and *Kṣema* for walls and such other means of protection.—'*Prachāra*'—path. What Bṛhaspati has said regarding the possibility of partitioning 'cooked food' in the form of exchanging, can refer only to large quantities of food, and that too in the form that the man receiving the 'cooked food' from another, shall pay in return some other form of wealth,— *e.g.*, the monetary value of that food.—(*Sarvajñanārāyaṇa.*)

Cloth, conveyance and ornament—whatever of these may have been used by the coparceners while they have been joint shall continue to be his, and shall not be divided at the time of partition. This refers to cases where there is not much difference either in the number or the value of the things used by different individuals. Such ornaments and other things as are very valuable must be divided; it is in view of such cases that we have Bṛhaspati's declaration regarding the propriety of dividing by 'the selling of such cloth, ornaments and other things.'—'*Kṛtānnam*,' such as cooked rice, *Saktu* and the like; these shall not be divided. But if the *Saktu* and other things are in large quantities they may be 'divided' by the man giving in exchange the value of the *Saktu*; as Bṛhaspati has declared that 'cooked food can be exchanged with uncooked food and thus divided,' so that it is partible, according to Bṛhaspati.—'*Udakam*,' the water in the well or tank, which can be used by all and hence cannot be divided.—'*Striyaḥ*'—female slaves; since they can never be of equal value, they cannot be divided; but they may be made to do an equal amount of work for each of the coparceners.—'*Yogakṣemam*,' ministers, priests and others, who help prosperity.—'*Prachāram*'—the pathway of cattle, etc.—all this Manu and others have declared to be impartible.—(*Kullūka*.)

The text cites examples of such property left by the father and others as, being of different values, must remain with the person with whom it has been till then.—'*Patram*,' the horse and other things.—'*Kṛtānnam*' the food that has been eaten by the man in the joint family, before partition.—'*Udakam*,' water in well or tank.—'*Striyaḥ*' female slaves.—'*Yoga*,' is acquisition of what has not been obtained; '*Kṣema*' is guarding or keeping of what has been acquired; and the '*prachāra*' of these two are the ministers and priests who help them.—All these things should not be divided. But if they are of much value, they have to be divided, as declared by Bṛhaspati.—'Selling the clothes and ornaments, etc., etc.'; as regards slaves and slave-girls, they are to be made to do equal work for all coparceners.—(*Rāghavānanda.*)

This text mentions the impartible things. '*Pātram*' (*v. l.*, for '*patram*') stands for water-vessel.—At the time of partition, 'Cloth' and the other three things shall be given to these persons with whom they have been before the partition.—'*Udakam*,' the water in wells; which shall be used by all the coparceners and not partitioned.—'*Striyaḥ*'—such slave-girls as have been kept as 'wife'; even though all the coparceners are 'owners' of the slaves, and hence these latter are liable to partition, yet such of them as have been kept as 'wife' shall not be divided.—'*Yogakṣemam*'—'*Yoga*' is the obtaining of what

has not been already got, and '*Kṣema*' is the keeping (guarding) of what has been obtained; these terms here stand for the persons who help to bring about these, *i.e.*, '*yoga*' here stands for pupils and those for whom one officiates at sacrifices,—these being the source of wealth; and '*kṣema*' for such sources of safety as those in charge of approaches and of the village; while the lands of villages and cities are sources of both '*yoga*' and '*kṣema*';—these should continue to bear the same relation to the coparceners as before partition; and they should not be divided.—'*Prachāra*' stands for the way to fields, gardens and other places; this way also should be used by all, and not divided.—*Nandana.*)

'*Ornaments*'—Those belonging to the mother. '*Kṛtānnam,*' cooked food.—'*Udakam,*'—*i. e.*, wells, etc.—'*Strīyaḥ*'—female slaves.—'*Yoga*' is acquiring of what one has not got, and '*kṣema*' the keeping of what has been acquired.—'*Prachāra*' stands for *way*, *i.e.*, water-drains and the like. These are not partible.—(*Rāmachandra.*)

'*Patra*' here stands for *conveyance*—say some people. But this is contrary to Kātyāyana's text where '*patra*' has been used in the sense of 'what has been entered in a document as meant for religious purposes' (see above).—What is meant by the impartibility of cloth and the rest is that those things by themselves shall not be partitioned, but through valuation, they are certainly to be partitioned, as declared by Bṛhaspati (see below).—'*Yogakṣema*' stands for such kings and rich persons as have been 'acquired' by the father as supporters and protectors.'—'*Prachāra*' is space for entrance and exit.—(*Aparārka*, pp. 725-726.)

The impartibility here laid down is in regard to such cloth, etc., as are worn at the time of partition.—(*Mitākṣarā*, p. 637.)

'*Patram*' here stands for what has been entered in a document,—as has been indicated by Kātyāyana and Bṛhaspati. Halāyudha however has explained '*patram*' as 'conveyance.'—'*Kṛtānnam*' cooked food, such *saktu* and the like; or *rice*, as explained by the *Pārijāta*.—'*Striyaḥ*,' such women as are 'connected': their impartibility has been declared by Gautama (see above).—'*Yogakṣemam,*' *i.e.*, ministers and priests, these being the sources of *yoga* (wealth) and *kṣema* (protection). The meaning is that people should continue to depend for their living and protection on the same royal family and others as their father did. So says the *Prakāsha*; according to *Halāyudha* however, '*yoga*' stands for boats and such things, and '*kṣema*' for the means of safety and protection, such as Forts and the like.—(*Vivādaratnākara*, p. 504.)

Only such clothes are impartible as are actually worn at the time.—'*Patram*' stands for *conveyance*, such as horses, *palkis*, and so forth; of these also only those are impartible which have been habitually used almost exclusively by any one person. Or the term '*patra*' may stand here for such property as has been entered in a document.—'*Kṛtānnam*,' cooked rice and puddings; such things should, as far as possible, be eaten by all together.—'*Udakam*' stands for the reservoir of water, such as well and the like; this also is impartible when there is an odd number; it has to be used by all by turns.—'*Striyaḥ*'—female slaves, and also kept mistresses; the odd slave-girl should be made to do work by turns, the even number may be divided; but kept mistresses shall never be divided, even though they be even in number.—'*Yoga*' stands

for the acquisition of what has not been obtained; in fact what is indicated by the term '*yoga*' is the sources of acquiring of what one has not got, *i.e.*, such rites performed in the *Shrauta* and *Smārta* fire as are conducive to such acquisition. '*Kṣemā*' is the keeping of what has been acquired; but what it indicates here is such works of public utility as the building of platforms, granting benefactions, digging tanks, founding parks, and so forth. All this, even though it may have been done by the father, shall not be divided.—(*Madanapārijāta*, pp. 685—687.)

'*Vastram*'—such cloth as is actually worn at the time.—'*Patram*,' conveyance, such as horses, *Palkis* and so forth; these also shall remain with him who has used them; what has not been ridden by any one shall be divided.—'*Ornament*' also shall remain with one who has worn it; what has not been worn is common and must be divided.—'*Kṛtānnam*, cooked rice, puddings and the like; this should be eaten and not partitioned.—'*Udakam*,' the reservoir of water, well and the rest; the odd well shall be used by turns, and not partitioned by valuation.—'*Striyaḥ*'—slave-girls; the odd girl shall be made to work for the coparceners by turns. But such slave-girls as were in the keeping of the father shall not be partitioned, even though they be in even numbers.—'*Yoga*' indicates such rites as are performed with the help of *shrauta* and *smārta* fires.—'*Kṣema*' stands for works of public utility as the building of platforms, digging of tanks, founding of parks, and so forth.—Both these are not to be partitioned, even when they have been acquired at the cost of the paternal property. Or the term '*yogakṣema*' may stand for umbrellas, chowries, weapons, conveyances and so forth.—'*Prachāra*' is the entrance and exit of houses and gardens. This also shall not be partitioned.—(*Parāsharamādhava*, pp. 380-381.)

'*Vastram*'—clothes actually worn by unseparated coparceners.—'*Patram*,' such debt as has been entered in a document—'*Striyaḥ*,' female slaves.—'*Udakam*' water of the well or tank situated near the house. The terms '*yoga*' and '*kṣema*' have been explained by Lokākṣi as follows:—'*Kṣema*' is work of public utility, and '*yoga*' is sacrifice; both these have been declared to be impartible. Or the term '*yogakṣema*' may stand for what is earned by the coparceners from kings and other persons who have been approached for help in the performance of works of public utility and of sacrifices.—'*Prachāra*' stands for the pathway for cows; or the term may stand for the courtyard.—'*Avibhājyam prachakṣate*,' *some thoughtless Smṛti-writers declare these to be impartible.*—(*Smṛtichandrikā*, pp. 643-644.)

'*Vastram*'—clothes worn on the body, or intended for the clothing of guests.—'*Patram*,' horse and other conveyances—'*Alaṅkāra*,' the ring and other ornaments.—'*Kṛtānnam*'—sweets and the like—'*Udakam*'—water of wells and tanks.—'*Striyaḥ*,' women, other than slaves.—'*Yogakṣema-prachāram*,'—*i.e.*, bedsteads, seats, and vessels used in eating, washing and so forth.—((*Dāyabhāga*, p. 127.)

'*Patram*' conveyance.—Clothes and other things shall remain with that person by whom they are worn; those that are not worn can only be for sale; and these shall certainly be divided.—'*Kṛtānnam*,' cooked food; this shall be eaten by all, as far as possible, and it shall not be divided by weight.—'*Udakam*,' the well and other reservoirs of water; these shall be used by all

according to their needs.—'*Striyaḥ*'—female slaves; odd numbers shall not be divided; they shall be made to work by turns; those that were in keeping of the father shall not be partitioned, even when even in number. The terms '*yoga-kṣēma*' stand for sacrifices and works of public utility; the impartibility of these is stressed as an example, with a view to indicate that these are impartible even when done at the cost of the paternal property. In the case of these, no partition is possible,—either of the acts themselves or of the merits acquired through them. Some people have held that the terms '*yoga-kṣēma*' stand for the authors of these, *i.e.*, kings, ministers, priests, and so forth. Others again explain the term as standing for weapons, chowries, shoes and such things.—'*Prachāra*' is the entrance and exit of houses and gardens; this also is impartible.—(*Vīramitrodaya*, pp. 708-709.)

'*Patram*,' conveyance; clothes, conveyances and ornaments shall remain with those who have been using them,—provided they are of equal value; if they are of different values, they must be divided.—(*Vyavahāramayūkha*, p. 129.)

'*Patram*,' horse, etc.;—'*Alaṅkāraḥ*,' rings, etc.—'*Striyaḥ*,' women other than slaves;—'*Yogakṣēmapachārah*,' vessels and other articles used for eating, sleeping and such other purposes.—(*Dāyanirṇaya* 15. 1—9.)

84. बृहस्पति 25.78—84.] वस्त्रादयोऽविभाज्या यैरुक्तास्तैर्न विचारितम् ।
धनं भवेत् समृद्धानां पत्रा [*v,l.*, वस्त्रा] लंकारसंश्रितम् ॥
मध्यस्थितमनाजीव्यं दातुं नैकस्य शक्यते ।
युक्त्या विभजनीयं तत् अन्यथाऽनर्थकं भवेत् ॥
विक्रीय वस्त्राभरणमृणमुद्ग्राह्य लेखितम् ।
कृतान्नं चाकृतान्नेन परिवर्त्य विभज्यते ॥
उद्धृत्य कूपवाप्यम्भः स्वानुसारेण गृह्यते ।
एकां स्त्रीं कारयेत् कर्म यथांशेन गृहे गृहे ॥
बह्व्यः समांशतो देयाः दासानामप्ययं विधिः ।
योगक्षेमवतो लाभः समत्वेन विभज्यते ॥
यथाभागानुसारेण सेतुः क्षेत्रं विभज्यते ।
प्रचारश्च यथांशेन कर्तव्यो रिक्थिभिः सदा ॥

Those by whom clothes and the like articles have been declared to be impartible have not taken into consideration the fact that the wealth of the rich people consists in conveyances (*v.l.*, clothes) and ornaments.—If all this remained common property, it could not be used; nor could it be given to any single coparcener; this has therefore got to be divided with some skill; otherwise it would be futile (or disastrous).—Clothes and ornaments are to be sold and the proceeds divided; debts entered in bonds are to be divided after realisation;

cooked food is to be divided after having been exchanged for uncooked food; the water of wells and tanks shall be drawn and used according to the needs of individuals; a single slave-girl shall be made to work in each house in accordance with the shares of the coparceners; if there are several slave-girls, they shall be divided equally; the same rule applies to male slaves also; property obtained for pious purposes [or obtained from persons whom the father had secured as patrons] shall be divided in equal shares; fields and embankments shall be divided according to the several shares; a common road (or pasture-ground) shall be used by the coparceners in proportion to their shares.—(*Bṛhaspati*, 25. 79—84.) [Quoted in *Aparārkā*, p. 726; *Vivādaratnākara*, pp. 505-506; *Parāsharamādhava*, p. 381; *Madanapārijātā*, p. 686; *Smṛtichandrikā*, pp. 644-645; *Vyavahāramayūkha*, p. 130.]

NOTES

'*One slave girl*'—This refers to a girl who has not been 'kept' as a mistress.—'*Yogakṣemavato lābhaḥ*' is what has been obtained from the king and such other well-to-do persons as the father had secured as supporters of his family.—*Prachāra*—is space for entrance and exit.—(*Aparārka*, p. 726.)

'*Madhyasthitamanājīvyam*'—If it remained common property, it could not be used.—'*Dātum naikasya shakyatē*'—it cannot be given to any single person.—'*Yogakṣemavataḥ*'—of ministers and priests. The 'partibility' of clothes and other things here asserted is in reference to valuable clothes, etc., while the denial of their partibility found in Manu and other Smṛtis is with reference to such clothes, etc., as are of small value, and should also be understood as denying the partition of these things, even when valuable, in any manner other than the one prescribed by Bṛhaspati. So that there is no incompatibility between the present text of Bṛhaspati and the text of Manu (see above sec. 83). In the opinion of the author of the *Prakāsha*, however, what are not to be divided are only such clothes, etc., of small value as are actually worn on the body of the coparceners, but all such valuable things as conveyances ornaments, elephants and so forth must be divided. The manner of dividing these is detailed in the text '*Madhyasthitamanājīvyam*, etc., etc.'—(*Vivādaratnakara*, p. 506)

According to some people clothes and other things are partible,—as declared by Bṛhaspati, on the basis of this they have held that the declaration by Manu (of their impartibility) should be disregarded. But this is not right; because whenever we find two contradictory texts, we have to restrict the spheres of their application; we cannot disregard them. In fact the texts of Bṛhaspati refer to such clothes and other things as have not been worn, while the texts of Manu and others refer to such as have been worn.—(*Parāsharamādhava*, p. 382.)

If there are many horses and other things and they belong to persons who make a living by selling these, they are certainly to be divided.—(*Madanapārijāta*, p. 686.)

If a single piece of cloth meant to be worn were divided, it would be destroyed; if a debt-bond were divided, it would cease to be valid; if large quantities of cooked food were divided, it would be wasted so far as that part of it which would fall to the share of a man who eats little; in the matter of wells partition is difficult;—from all this it would appear as if all these were impartible, yet they could be divided so skilfully as to preserve them from waste or destruction; because, if they were to remain common property, the coparceners would, through mutual policy, be obstructing their use by any one among themselves, and the things would become absolutely useless. The skilful manner of dividing these is set forth in detail.—'*Ṛṇam udgrāhya*,—having realised the debt from the debtor.—'*Anusareṇa*,' in accordance with their respective shares.—(*Smṛtichandrikā*, pp. 644-645.)

'*Udgrāhya*'—having realised it from the debtor.—(*Vyavahāramayūkha*, p. 131.)

85. बृहस्पति 25. 85.] वस्त्रालङ्कारशय्यादि पितुर्यद् वाहनादिकम् ।
गन्धमाल्यैः समभ्यर्च्य श्राद्धभोक्त्रे तदर्पयेत् ॥

The clothes, ornaments, bed and such other things as also the conveyance and the like,—which were used by the father shall be given to the person fed at his Shrāddha after being worshipped with perfumes and garlands.—(*Bṛhaspati*, 25. 85.) [Quoted in *Mitākṣarā*, p. 637; *Parāsharamādhava*, p. 380; *Vīramitrodaya*, p. 709; *Vyavahāramayūkha*, p. 129.]

NOTES

What Bṛhaspati says is that things that had been worn by the father should be given away by the sons when dividing the property after his death, to the person fed at the *Shrāddha*; but those that are entirely new should be divided.—(*Mitākṣarā*, pp. 637-638.)—'*After his death*,'—the implication is that if the partition occurs during the father's lifetime such things will go to the father.—The object of *worshipping* is the person fed.—(*Bālambhaṭṭī*)

Clothes and the rest other than those not worn by the father shall be divided.—(*Parāsharamādhava*, p. 380.)

Clothes and other things worn by the father should be given to the person fed at the *Shrāddha*.—(*Vīramitrodaya*, p. 709.)

Clothes and other things worn by the father should be given to the person fed at his *Shrāddha*.—(*Vyavahāramayūkha*, p. 129.)

86. याज्ञवल्क्य 2 123.] पितृभ्यां यस्य यद् दत्तं तत्तस्यैव धनं भवेत् ॥

Whatever has been given by the parents to any son shall remain his property.—(*Yājñavalkya*, 2. 123.) [Quoted in *Madanapārijāta*, p. 657; *Parāsharamādhava*, p. 341; *Smṛti-tattva* II, p. 175.]

NOTES

This rule is applicable to cases where brothers already divided have another partition with a brother born after that division.—(*Vishvarūpa.*)

It has been declared before this that the son born after partition receives all the property that belonged to the father and the mother; but if after partition, the father or the mother, through love, makes a gift of an ornament or some such thing to one of the divided sons,—to this gift no objection shall be made by the son born after the previous partition, nor shall he take it back;—this is what is asserted in this text.

'*Whatever*'—ornament and such things—is given by the parents who have been divided from the sons, to a son who has been previously divided,—that remains the property of that same son, and cannot be taken by the son born after the said division.—On the same principle, whatever may have been given by the parents to a son before the division, shall also remain the property of that son. Similarly, if there is no son born after the first partition, when the sons come to divide the property left by the divided parents, after the death of the latter, anything that may have been given by them to any son shall remain with that son entirely, and shall not be taken by any one also.—(*Mitākṣarā.*)

'*Parents*'—includes the grandfather and others also.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

If after partition, the father or mother has given an ornament or some such thing to any of the divided sons, no objection shall be taken to this by a son that may be born after the said partition.—On the same principle, if, even before the partition, the father or mother has given something to a son, it shall remain his entirely. For this same reason no son should take exception to anything being given by the parents to another son.—(*Madanapārijāta*, pp. 656-657.)

The son born after partition has no right to object to the parents' giving any property to sons previously divided; nor shall he take away what has been so given.—(*Parāsharamādhava*, p. 341.)

Either before or after partition, if the father or the mother makes a gift to any son, that will be the property of that son alone, and it shall not be shared by the other sons. This same rule has been laid down by Vyāsa and Nārada; the latter however excludes immovable property from the purview of this rule.—(*Aparārka.*)

If the parents have made a gift to the separated sons, the son born to the parents after separation is not entitled either to object to it or to take it away from those to whom it has been given.—(*Parāsharamādhava*, p. 341.)

This means that whatever ornaments or such things have been given by the parents to their sons or daughters shall be the property of that same son or daughter.—(*Smṛtitattva* II, p. 175.)

87. व्यास] पितामहेन यद् दत्तं पित्रा वा प्रीतिपूर्वकम् ।
तस्य तन्नापहर्तव्यं मात्रा दत्तं च यद् भवेत् ॥

What has been given to one through love, by the grandfather, the father or the mother, shall not be taken (by others).—(*Vyāsa.*) [Quoted in *Aparārka*, p. 730; *Vivādaratnākara*, p. 501; *Vivādachintāmaṇi*, p. 211; *Dāyabhāga*, p. 113; *Vibhāgasāra*, 7. 1—4.]

88. नारद 13.7.] मात्रा च यद् धनं [स्वधनं *v.l.*,] दत्तं यस्मै स्यात् प्रीतिपूर्वकम् ।
तस्याप्येष विधिर्दृष्टो मातापीष्टे यथा पिता ॥

The property [*v. l.*, her own property] that has been bestowed, from affection, by the mother on any of her sons, shall also be subject to the same rule—[*i.e.*, it shall be exempt from partition]; the mother has the same power as the father.—(*Nārada*, 13. 7.) [Quoted in *Aparārka*, p. 730; *Vivādaratnākara*, p. 501; *Smṛtichandrikā*, p. 641.]

NOTES

'*Svadhanam*' (which is another reading for '*yad-dhanam*'), '*her own property*.'—The presence of this word implies that this refers to *Strīdhana*.—(*Vivādaratnākara*, p. 501.)

'*The same power*'—in regard to her own property.—'*The same rule*,'—*i. e.*, the rule regarding gifts made by the father (*Nārada*, 13. 6). On the same analogy, gifts received from friends and others also should not be partitioned.—(*Smṛtichandrikā*, p. 641.)

89. बृहस्पति 25. 78.] पितामहपितृभ्यां च दत्तं मात्रा च यद् भवेत् ।
तस्य तन्नापहर्तव्यं शौर्यभार्याधनं तथा ॥

Whatever has been given to one by the paternal grandfather, the father or the mother,—as also what he has acquired by valour, or the property of his wife,—shall not be taken (by others).—(*Bṛhaspati*, 25. 78.) [Quoted in *Smṛtichandrikā*, p. 641; *Parāsharamādhava*, p. 379; *Vyavahāramayūkha*, p. 127; *Vibhāgasāra*, 7. 1–5.]

NOTES

Here *Bṛhaspati* describes the property that shall not be partitioned. (*Smṛtichandrikā*. p. 641.)

Bṛhaspati here declares the impartibility of what has been given by the father and others.—(*Vyavahāramayūkha*, p. 127.)

A loving gift is not partible.—(*Vibhāgasāra*, 7. 1–5.)

90. उशनस्-व्यास] अविभाज्यं सगोत्राणामासहस्रकुलादपि ।
याज्यं क्षेत्रं च पत्रं च कृतान्नमुदकं स्त्रियः ॥

What is obtained by the conducting of sacrifices, land, conveyance, cooked food, water and women are not to be partitioned among *Sagotras* even up to the thousandth degree. —(*Ushānas* or *Vyāsa*.) [Quoted in *Mitākṣarā*, p. 641; *Vivādaratnākara*, p. 504; *Smṛtichandrikā*, p. 645; *Parāsharamādhava*, p. 381; *Madanapārijāta*, p. 687; *Dāyabhāga*, p. 127; *Vyavahāramayūkha*, p. 130.]

NOTES

The impartibility of 'lands' here asserted is with reference to sons of the Brāhmaṇa father from wives of the Kṣattriya and other lower castes; it having been declared elsewhere "*na pratigrahabhūrdēya, etc.*"—(*Bṛhaspati*).—(*Mitākṣarā*, p. 641.)

'*Kṣetram*,' homestead—land;—'*Patram*,' conveyance;—so says the author of the *Prakāsha*.—(*Vivādaratnākara*, p. 504.)

No heed should be paid to this; it stands to reason that 'land' as well as 'the person for whom one sacrifices' should be partitioned; the fact of the matter is that what is obtained from 'the person for whom one sacrifices' should be divided; and land should be partitioned with the consent of all the coparceners.—(*Smṛtichandrikā*, p. 645.)

What is meant by the 'impartibility of lands' here is that if lands have been obtained (by the father) as a 'gift,' the son of his Brāhmaṇa wife shall not give a share out of it to the son of the Kṣattriya wife.—(*Parāsharamādhava*, p. 381.)

This is in reference to the sons born to a Brahmaṇa from wives of the Kṣattriya and other lower castes.—'*Yājyam*,' what has been received as fee for conducting sacrifices.—(*Madanapārijāta*, p. 687.)

'*Yājyam*' here stands for the *sacrificial place* (altar), or the deity; and not for what is obtained from the conducting of sacrifices; this latter being already included under '*Vidyādhana*,' 'gains of learning.'—(*Dāyabhāga*, p. 127.)

What is asserted here is the impartibility of such *pasture land* as has been obtained as a 'gift,' which is not to be shared by the sons of the wives of the Kṣattriya and other lower castes.—(*Vyavahāramayūkha*, p. 130.)

91. गौतम] उदकयोगक्षेमकृतान्नेष्वविभागः, स्त्रीषु च संयुक्तासु ।

There is no partition of water, of sacrifices, of works of public utility and of cooked food; as also of such women as have been connected.—(*Gautama*.) [Quoted in *Aparārka*, p. 726.]

NOTES

The women referred to are those who have been in the keeping of some one individual.—(*Aparārka*, p. 726.)

92. कात्यायन] धनं पत्रनिविष्टं तु धर्मार्थं यन्निरूपितम् [*v.l.*, च निरूपितम्]
उदकं चैव दासश्च [*v.l.*, दाराश्च] निबन्धो यः क्रमागतः ॥
धृतं वस्त्रमलङ्कारो नानुरूपं तु यद् भवेत् ।
यथा कालोपयुक्तानि [*v.l.*, योग्यानि] तथा योज्यानि बन्धुभिः ॥

The property that has been entered in a document as set aside for religious purposes, water, slave, ancestral landed property, worn clothes and ornaments, what is incapable of being divided,—all these should be adjusted among the relatives in accordance with the periods of time.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 725; *Vivādaratnākara*, pp. 504-505; *Madanapārijāta*, p. 685; *Vyavahāramayūkha*, p. 131.]

NOTES

'*Nānurūpam*'—not amenable to division, *e.g.*, the number of which is not the same as that of the co-sharers; such a thing should be adjusted in regard to the number of co-sharers in accordance with time.—(*Aparārka*, pp. 725-726.)

'*Worn cloth*'—such as is of high value.—'*nānurūpañcha yad bhavet*' the direct division of which is not possible.—(*Vivādaratnākara*, pp. 504-505)

'*Dhanam patranivistam.*'—The meaning is that so long as the debt entered in a document has not been cleared, the property cannot be divided.—(*Madanapārijāta*, p. 685.)

'*Dhanam patranivistam.*'—what has been entered in a document as being for religious purposes.—'*Water*' in a well, etc.—'*Nibandhaḥ*'—means of livelihood. '*Nānurūpam*'—incapable of being divided.—(*Vyavahāramayūkha*, p. 131.)

'*Nibandho yaḥ kramāgataḥ*'—ancestral landed property should not be divided, only its enjoyment can be adjusted.—(*Vivādachandra*, 21. 2—7.)

93. कात्यायन] लोके रिक्थविभागेऽपि न कश्चित् प्रभुतामियात् ।
भोग एव तु कर्तव्यो न दानं न च विक्रयः ॥

No one has the right to enforce partition. One can only enjoy it; he cannot give it away or sell it.—(*Kātyāyana*) [Quoted in *Smṛtichandrikā*, p. 646.]

NOTES

In the case of ancestral immoveable and other kinds of property, no one—not even the father and others—have the right to enforce partition, or even to sell or give it away. The meaning is that in such cases there can be neither partition nor selling nor giving away without the consent of the coparceners.—(*Smṛtichandrikā*, p. 646.)

94. गौतम 28. 47.] स्त्रीषु संयुक्तास्वविभागः ।

Of women connected (with members of the family), there shall be no partition.—(*Gautama*, 28. 47.) [Quoted in *Madanapārijāta*, p. 687.]

NOTES

'*Samyuktāsu*'—kept. Slave-girls, if in the keeping of any man, shall not be partitioned. Those not in keeping may be made to work, if they are odd in number; and to be partitioned if even in number.—(*Madanapārijāta*, pp. 686-687.)

95. अर्थशास्त्र II, p. 31.] स्वयमर्जितमविभाज्यम्—अन्यत्र
पितृद्रव्यादुत्थितेभ्यः ।

The self-acquired property (of a coparcener) is impartible; except what has been acquired out of the paternal property.'—(*Arthashāstra* II, p. 31.)

96. मनु 9. 209.] पैतृकं तु पिता द्रव्यमनवाप्तं [*v.l.*, प्यं] यदाप्नुयात् ।
न तत् पुत्रैर्भजेत् सार्धमकामः स्वयमर्जितम् ॥

If the father recovers a lost ancestral property, he shall not, unless he so wishes, share it with his sons,—being, as it is, his self-acquired property.—(*Manu*, 9. 209.) [Quoted in *Dāyabhāga*, p. 128 ; *Vivādaratnākara*, p. 461 ; *Dāyanirṇaya*. 16. 1– 5.]

NOTES

If, in addition to what he has inherited, the father recovers some such ancestral property as had become lost, he shall not, unless he wishes it, share it with his sons, even after these latter have attained their majority. An occasion for such sharing would arise when the father himself proceeds to make the division among his sons. . . . As a matter of fact, even in the case of the father's self-acquired property, he himself divides it among his sons as soon as they have attained their majority and he finds them duly qualified,—(*Medhātithi.*)

'*Paitṛkam*'- belonging to his own father.—'*Anavāptam*,' which could not be recovered by the efforts of his own father.—'*Prāpnuyāt*'—by strenuous efforts. This implies that the ancestral property that has come to him without such effort shall be divided by him among the sons, even when so desired by the latter ; as Yājñavalkya has declared—'after that their ownership would be similar.'—(*Sarvajñanārāyaṇa.*)

If there has been some ancestral property which had been lost and which his father had been too weak to recover,—and which has been recovered by that father's son,—such property would be the self-acquired property of this latter, who shall not share it with his sons, unless he so wishes it.—(*Kullūka.*)

There has been some ancestral property which none of his predecessors had been strong enough to recover,—if this comes to be recovered by the father, it is his self-acquired property ; and unless he wishes, he shall not share it with his sons. Yājñavalkya also has said the same thing in the text '*Kramādabhyāgatam*, *etc.* (2. 119). This rule pertains to a case where the partition is being done at the instance of rebellious sons ; in cases where the partition is being done by the father of his own accord, the rule is that 'if the partition is made by the father, he shall divide his sons according to his wish.'—(*Rāghavānanda.*)

'*Anavāptam*'- which had been taken away by others and which his father could not recover ;—if this the father has recovered by himself, it is his self-acquired property. This implies that at the time of partition, the ancestral property must be divided between the father and his sons.—(*Nandana.*)

If the father has recovered a property, which could not be recovered by his father and other ancestors, it is his self-acquired property, and he shall not share it with his sons, if he is unwilling to do so.—(*Rāmachandra.*)

Of the ancestral property, if there has been something that had been long lost,—and which had not been recovered by others either because they were incapable of it, or because they did not make an attempt to do it,—if such a property has been recovered by the father at the expense of money and bodily effort, it shall be entirely his own, and not a common, property.—'*Anavāptam*'—not recovered, by the sons. The readings—'*anavāpyam*' and '*anavāpya*' are not right.—(*Dāyabhāga*, p. 128.)

'*Paitṛkam*,'—Inherited through the father, ancestral;—'*Anavāpyam*' (which is another reading for '*anavaptam*'),—which could not be recovered by his father.—This he shall not share with his sons, if he is unwilling to do so; as it would be property acquired by himself.—(*Vivādaratnākara*, p. 461.)

If the father has recovered an ancestral property that had been taken away by strangers,—and this has been done without drawing upon any ancestral property, that property is not to be partitioned without his consent; similarly with the self-acquired property of the father.—(*Dāyanirṇaya*, 16. 1. 5—6.)

97. याज्ञवल्क्य 2. 119.] क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः ।
दायादेभ्यो न तद् दद्याद् विद्यया लब्धमेव च ॥

If any one recovers an ancestral property which had been lost, he shall not give it to his coparceners; nor what may have been acquired by learning.—(*Yājñavalkya*. 2. 119.) [Quoted in *Vivādaratnākara*, p. 499; *Madanapārijāta*, p. 684; *Parāsharamādhava*, p. 376; *Smṛtichandrikā*, p. 642; *Dāyabhāga*, pp. 113, 115; *Vīramitrodaya* p. 707; *Smṛtitattva* II, p. 177; *Vyavahāramayūkha*, p. 124.]

NOTES

If that which has come down from the ancestors, *i.e.*, ancestral property in the shape of houses, gardens and the like, had been taken away by a stranger,—is recovered by one with the consent of his coparceners,—he shall not give that recovered property to the coparceners. If the property has been recovered without the consent of the coparceners, then the recoverer shall take for himself the fourth part of it, and he shall divide the rest equally with the coparceners. Such is also the view of *Ṛṣyashṛṅga* who says—'*Pūrvanaṣṭāntu yo bhūmim*,' *etc.*, *etc.*'—Similarly what has been obtained by—*i.e.*, by means of—learning; the same has been declared by Manu, Kātyāyana, Vyāsa, Nārada, Bṛhaspati, Gautama and Shaṅkha-Likhita.—(*Aparārka*, 164.)

'*Kramāt*,'—through the ancestors, from the father onwards,—'*āyātam*'—the property that has come down.—'*Hṛtam*,' taken away by strangers;—and which could not be recovered by the father and other ancestors, by reason of their incapacity;—if any one among the sons [recovers that

property, with the consent of the other brothers, -he shall not give that to his '*coparceners*,' *i.e.*, brothers; the recoverer shall keep it himself.. In such property, if there is land, then the recoverer shall take for himself only a fourth part of it, and the rest he shall share equally with the others. The same has been declared by Shaṅkha also—'*Pūrvanaṣṭāntu yo bhumim, etc.*'—Similarly what one has obtained by 'learning,' - *i.e.*, by the learning, teaching, and expounding the meaning of the Veda that also the learner shall take himself, and not give to the other coparceners. - (*Mitākṣarā.*)

If, at the time of partition, an ancestral property is found to be such as has not been in the possession of the family; -and after being separated from his brothers, if one of the coparceners, with the consent of the others, recovers, by his own power, that lost property, -he shall not give that property to the separated coparceners, for further partition. Similarly also what has been acquired by learning. -The particle '*cha*' includes the 'friendly gift' and such other things. -(*Vishvārūpa.*)

A property that has come down from the father and other ancestors, --if it had been taken away by strangers, and could not be recovered by reason of the powerlessness of the ancestors, - if any one of the brothers recovers it, by his own power, he shall not give it to his coparceners. - (*Vīramitrodaya Commentary.*)

'*Kramādabhyāgatam*' -come down through the father; --'*taken away*' by strangers, -not recovered by any of the ancestors, through powerlessness; if from among the coparceners, any one recovers it, he shall not give it to the other coparceners. Here the recovery of the property must have been done with the consent of the other coparceners, -says the author of the *Mitākṣarā*. The statement that is found in Hārīta, to the effect that -'if one coparcener, by his own effort, recovers a previously lost property, the others obtain part of it according to their respective shares'-is not right; as it has not been quoted by the *Smṛtimahārṇava*, the *Kāmadhenu*, the *Kalpataru*, the *Pārijāta* and others —(*Vivādaratnākara*, p 499.)

If an ancestral property has been taken away by others, and has not been recovered by the father and other ancestors, through inability,—and if one of the several sons or other persons entitled to inherit that property recovers that lost property,—having been told by others to recover it, - then the recoverer shall not give it to those who have not recovered it; he shall take it all to himself.—(*Madanapārijāta*, p. 684)

If an ancestral property had been taken away by thieves or others, and not recovered by other coparceners,—if any one among the sons recovers it, with the consent of others, it shall belong to him alone. If it is a landed property, the recoverer shall take to himself only the fourth part of it, and the rest he shall share equally with the other coparceners. - (*Parāsharamādhava*, p. 376)

If one has, by his own effort, recovered an ancestral property that had been lost, he shall not give it to the other coparceners. - This refers to property other than lands. —(*Smṛtichandrikā*, p. 642.)

If an ancestral property, - which had been taken away by force by strangers, - is recovered by a coparcener, with the consent of the other coparceners, he shall not give it to the other coparceners. -(*Smṛtitattva* II, p. 177)

98. बृहस्पति 25. 12-13.] पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम् ।
विद्याशौर्यादिना प्राप्तं तत्र स्वाम्यं पितुः स्मृतम् ॥
प्रदानं स्वेच्छया कुर्याद् भोगं चैव ततो धनात् ।
तदभावे तु तनयाः समांशाः परिकीर्तिताः ॥

The property belonging to the grandfather which had been lost but subsequently recovered by the father by his own power,—as also what has been acquired by him through learning, valour and such other means,—in all these the father's ownership has been declared. Out of all this, he may make a gift, or even enjoy it at his will. But on his death, his sons have been declared to be equal sharers.—(*Bṛhaspati*, 25. 12-13.) [Quoted in *Dāyabhāga*, pp. 128-129.]

NOTES

'*Svashaktyā*,' 'by his own power,' means 'by the use of his own wealth and bodily exertion.' The term '*father*' stands for all acquirers of self-acquired property; the text mentioning '*acquired by himself*' as the reason for what is asserted here.—This same rule applies to ancestral property also—with the exception of immoveable property—to the same extent as to the non-ancestral self-acquired property.—(*Dāyabhāga*, p. 129.)

99. मनु 9. 200.] पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत् ।
न तं भजेरन् दायादा भजमानाः पतन्ति ते ॥

The ornament worn by the ladies during the lifetime of their husbands shall not be taken by the coparceners; if they take it, they become degraded.—(*Manu*, 9. 200.) [Quoted in *Mitākṣarā*, p. 639; *Parāsharamādhava*, p. 380; *Madanapārijāta*, p. 686; *Vivādachandra* 21. 2 8; *Vīramitrodaya*, p. 709.]

NOTES

See also under IV. 18.

Ornaments shall remain with those by whom they have been worn; those that have not been worn shall be divided;—'*Ladies*' are mentioned only by way of illustration.—(*Mitākṣarā*, p. 639.)

What is not worn is common property and should be partitioned. All this is implied by the qualifying phrase '*worn by the ladies*'—(*Parāsharamādhava*, p. 380.)

'*Worn*,'—*i.e.*, in which the exclusive ownership of the ladies has been produced by the fact of the ornament having been a loving gift.—(*Madanapārijāta*, p. 686.)

As regards the ornaments of ladies even though they may have been made out of the common property, they shall not be divided.—(*Vivādachandra*, 21. 2—8.)

Ornaments worn by the ladies shall not be divided; the mention of 'worn' implies that what is not worn shall be divided.—'*During the lifetime of the husband*'—this implies that what is not to be partitioned is that which is worn by ladies in a particular country as the sign of *non-widowhood*.—(*Vīramitrodaya*, p. 709.)

'*Worn during the husband's lifetime*'—What was given to the ladies by the husband merely for their adornment,—that the sons shall not divide during her lifetime, they shall divide it after her death.—(*Sarvajñanārāyaṇa*)

The ornament that during their husband's lifetime was worn by the ladies loved by him shall not be taken by the sons when on the father's death they set about dividing his property; they incur sin if they do take it.—(*Kullūka*.)

When an ornament has been given to a lady for the purpose of adornment, if that is divided by her brother-in-law and others, on the death of her husband, they incur sin; they shall therefore not take it.—(*Rāghavānanda*.)

Inasmuch as ornament has not been included under '*Strīdhana*,' it is regarded as the property of the husband; and as such it would be liable to be partitioned by his heirs; this is what is meant to be forbidden here.—(*Nandana*.)

'*Dāyādāḥ*'—sons.—'*Tam*'—ornament.—'*Te*,' the sons.—(*Rāmachandra*.)

100. शङ्खलिखित] न वास्तुविभागो नोद [*v.l.*, ऽप्योद] पात्रालङ्कारानुयुक्त [*v.l.*, रोपयुक्त; रोपभुक्त] स्त्रीवाससामपां प्रचारवर्त्मनां [*v.l.*, उपचाराध्वानां ; प्रचाररथ्यानां] अविभागश्चेति प्रजापतिः ।

There is no division of the house; nor of the water-vessel, the ornament, the enjoyed woman or the used clothes; there is no division also of the water-drains;—so says Prajāpati.—(*Shaṅkha-Likhita*.) [Quoted in *Vivādaratnākara*, p. 503; *Aparārka*, p. 726; *Smṛtitattva* II, p. 175; *Vyavahāramayūkha*, p. 129.]

NOTES

'*Vāstu*,'—house;—'*Udapātram*,' water-vessels made of metal;—'*ornaments*,'—only those worn on the body;—'*anuyukta*,' used, enjoyed; the meaning is that there is no division of such woman or cloth as has been enjoyed or worn by any single coparcener.—'*apāmprachāravartmanām*,' of water-drains.—(*Vivādaratnākara*, p. 504.)

When one of the coparceners has built a house for himself, and another also has built one for himself in some other place, the house shall remain with one who has built it.—(*Smṛtitattva* II, p. 176.)

101. कात्यायन] गोप्रचारश्च रथ्या च वस्त्रं यच्चाङ्गयोजितम् ।
प्र [*v.l.*, प्रा] योज्यं न विभाज्यं स्यात् शिल्पार्थं तु बृहस्पतिः ॥

Pasture-land, roads, clothes on the body, what is fit for being used (by particular individuals), and what is meant for the purpose of arts—shall not be divided:—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 726; *Vivādaratnākara*, p. 505; *Dāyabhāga*, p. 127; *Smṛtitattva* II, p. 174.]

NOTES

'*Aṅgayojitam*'—worn on the body; this refers to only such clothes as are of not much value.—'*Dharmārtham*'—what has been set aside for religious purposes, *i.e.*, as an offering to deities; such, *e.g.*, as gongs and the like.—'*Shilpārtham*,'—Painting brush and such things.—'*Prayojyam*,'—Loan advanced—says Halāyudha; such things to be utilised as books and the like, which should not be shared by the illiterate—says *Pārijāta*.

'*Prayojyam*'—that which is capable of being utilised by any one person, such as books and the like for purposes of learning; this shall not be shared by the illiterate;—similarly what is used for the practice of the fine arts should be shared only by those who are proficient in such arts.—(*Dāyabhāga*, p. 127.)

'*Prāyojyam*'—books and such things as are fit for being used by particular individuals should not be divided by the learned among unlearned coparceners—Such is the explanation given by the *Dāyabhāga*, the *Madanapārijāta* and others.—(*Smṛtitattva* II, p. 175.)

102. प्रजापति] गृहक्षेत्राणि याज्याश्च प्रसादो यश्च पैतृकः ।
मातृकश्च प्रसादो यः तद्विभागो न विद्यते ॥

There is to be no division of houses and fields, or of persons for whom the father has been officiating at sacrifices, or the gift from the father, or the gift from the mother. —(*Prajāpati.*) [Quoted in *Smṛtichandrikā*, p. 645.]

103. लोकाक्षि] क्षेमं पूर्तं योगमिष्टमित्याहुस्तत्त्वदर्शिनः ।
अविभाज्यं तु ते प्रोक्ते—शयनासनमेव च ॥

'*Kṣēma*' stands for *works of public utility*, and '*Yoga*' for *sacrifice*,—so say the wise. Both these are impartible; as also bedstead and seat.—(*Lokākṣi.*) [Quoted in *Smṛtichandrikā*, p. 643; *Mitākṣarā*, p. 641; *Madanapārijāta*, p. 687; *Parāsharamādhava*, p. 381; *Vīramitrodaya*, p. 709; *Vyavahāramayūkha*, p. 129.]

NOTES

Here *Lokākṣi* has explained the meanings of the terms '*Yoga*' and '*Kṣema.*'—(*Smṛtichandrikā*, p. 643.)

'*Pūrta*' stands for public tanks, parks, and such things; '*iṣta*' for sacrificing, feeding Brāhmaṇas and so forth.—(*Vyavahāramayūkha*, p. 129.)

104. मनु 9.119.] अजाविकं चैकशफं [*v.l.*, सैकशफं] न जातु विषमं भजेत् ।
अजाविकं तु विषमं ज्येष्ठस्यैव विधीयते ॥

One shall not divide the odd goat or sheep or an animal with uncleft hoofs; the odd goat or sheep is declared to belong to the eldest.—(*Manu*, 9. 119.) [Quoted in *Aparārka*, p. 723; *Mitākṣarā*, p. 638; *Madanapārijāta*, p. 686; *Vivādaratnākara*, p. 498; *Vyavahāramayūkha*, p. 129.]

NOTES

'*Animal with uncleft hoofs*'—such as the horse, the mule, the ass and the like.—When the number of cattle available do not admit of division in equal numbers, then the odd animal should be given to the eldest brother, and its value shall not be made good to the other brothers by giving them other things; nor shall the odd animal be sold and its value distributed among the brothers equally.—(*Medhātithi.*)

If the number available is not enough to permit of each of the brothers having one animal, it shall not be sold or exchanged for something else which could be equally divided; it shall go to the eldest brother; the term 'goat and sheep' in the second line includes the horse and other animals with uncleft hoofs.—(*Sarvajñanārāyaṇa.*)

'*Ekashapha,*'—*i.e.*, horse and the like—goat, sheep and other animals—also animals with uncleft hoofs;—if there is any of those which at the time of partition is incapable of being divided equally,—it shall not be divided; it shall go to the eldest brother; it will not be right to either sell it or add to it something else of equal value and then divide it equally.—(*Kullūka.*)

This text prescribes the odd animal as the share of the specially qualified eldest brother, and precludes the other brothers from it.—'*Ekashapha,*' horse, ass, etc.—(*Rāghavānanda.*)

This text provides an exception to the unequal division laid down in the general rule that the eldest brother shall take one more than the others; the meaning is that 'goat, sheep and other animals are to be divided, *not unequally* but equally; '*Viṣamam,*' meaning *unequally*, an adverb modifying '*bhajet*'; but what is incapable of being equally divided, on account of the number being uneven,—*e.g.*, when there are three brothers, and the number of animals is *one*, *two* or *four*,—then the odd animal shall go to the eldest brother. Or it may be divided equally either by each of the brothers keeping it or using it for stipulated periods of time, or by selling it and dividing the proceeds equally.—*Nandana.*)

'*Viṣamam*,'—whose number is not the same as that of the brothers—(*Aparārka*, p. 723.)

What is not divisible by reason of the uneven number shall go to the eldest brother.—(*Mitākṣarā*, p. 638.)

The goat, sheep and other animals that may be indivisible by reason of the unevenness of the number shall go to the eldest brother.—(*Madanapārijāta*, p. 686.)

When the number of goat, sheep or animals with uncleft hoofs is uneven, they shall not be sold and the proceeds divided equally ; they should be taken by the eldest brother.—(*Vivādaratnākara*, p. 498.)

105. नारद] स्त्रीधनं च नरेन्द्राणां न कदापि च जीर्यति

Strīdhana and the property of kings never perishes.—(*Nārada*.) [Quoted in *Vibhāgasāra*, 8. 2. 1.]

NOTES

The meaning is that the kingdom granted by kings is impartible.

106. मनु] दत्त्वा दानं तु विप्रेभ्यः + + + पुत्रे राज्यं समाप्य च
कुर्वीत प्रयाणं रणे ।

Having made gifts to Brāhmaṇas—and having made over the kingdom to his son, the king should march to battle.—(*Manu*.) [Quoted in *Vibhāgasāra*, 9. 1. 1.]

NOTES

This shows that the kingdom is inherited by only one son, and that too the eldest ; as declared by Vyāsa in the following text.—(*Vibhāgasāra*, 9. 1. 2.)

107. व्यास] शाश्वतोऽयं स्मृतो धर्मः पार्थिवानां नरर्षभ ।
न यवीयान् स्थिते ज्येष्ठे राजा भवितुमर्हति ॥

It is an eternal law ordained that among kings, so long as the elder brother is there, the younger cannot be the king.—(*Vyāsa*.) [Quoted in *Vibhāgasāra*, 9. 1. 2.]

Section 3

PERSONS NOT ENTITLED TO INHERIT

108. मनु० 9. 201—203.] (A) अनंशौ क्लीबपतितौ जात्यन्धबधिरौ तथा ।
उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः ॥
(B) सर्वेषामपि तु न्याय्यं दातुं शक्त्या मनीषिणा ।
ग्रासाच्छादनमत्यन्तं पतितो ह्यददद् भवेत् ॥
(C) यद्यर्थिता तु दारैः स्यात् क्लीबादीनां कथञ्चन ।
तेषामुत्पन्नतन्तूनामपत्यं दायमर्हति ॥

(A) Eunuchs and outcasts, those born blind or deaf,—the insane, the idiot or the dumb,—as well as those deficient in any organ,—are entitled to no share.—(B) But it is fair that the wise man shall give even to all these food and clothing to the best of his ability, as long as they live.—(C) If the eunuch and the rest should somehow happen to have a longing for a wife, the child of such of them as have issue is entitled to inheritance.—(*Manu*, 9. 201—203.) [Quoted in *Aparārka*, p. 750 ; *Mitākṣarā*, p. 836 ; *Madanapārijāta*, p. 682 ; *Vivādaratnākara*, p. 487 ; *Vivādachandra*, 21. 1-2 ; *Parāsharamādhava*, p. 366 ; *Vīramitrodaya*, pp. 710—712 ; *Smṛtichandrikā*, pp. 629, 631 ; *Vyavahāramayūkha*, pp. 163, 164 ; *Vivādachintāmaṇi*, p. 207 ; *Dāyabhāga*, p. 104 ; *Vibhāgasāra*, 5. 2—.1.]

NOTES

'*Food and clothing*'—being necessary for the keeping of the body ; it is implied that they should be provided with enough to enable them to engage servants and other attendants ; specially because in the case of the blind and the rest, living would be impossible without a servant. For those again for whom marriage is permitted, the provision made should include that for their wives also.—'*Ability*'—the food and clothing provided shall be in accordance with the man's needs.—(C) When there is desire to marry, they shall marry ; and the child born of the marriage,—whether a son or a daughter—shall have a share in the property.—The phrase '*and the rest*' does not include the *outcast*, etc.—Or the verse may be taken as referring to the case where the man has become insane, or otherwise disabled, after he has been 'initiated' and 'married.'—

The older writers have found in this rule something that is usefully applicable to the case of such marriages as are contracted for purely religious purposes. So that for the eunuch also,—who is entitled to the performance of such rites as are prescribed in the *Smṛtis*,—it is only right that there be marriage, even in the absence of sexual desire. As for the rites prescribed in the *Shrutis*, they can be performed only in the *Shrauta* fire which can be installed only by one who has got a son; so that the eunuch could never be entitled to the performance of these.—(*Medhātithi.*)

'*Klībaḥ*'—One whose impotency is incurable.—'*Patita*,' one who has committed a heinous crime, and has not performed the expiatory penance.—'*Vadhira*' suffering from congenital deafness.—'*Insanity and the rest*'—are meant to be such as are incurable.—'*Jaḍa*'—one whose organs of action are not under his control.—'*Nirindriyāḥ*'—those unable to have any sensations.—(C) '*Arthitā*'—implies connection with wife. What are meant are the born blind and the like.—'*Utpannatantūnām*'—when children are born to them. Even those brothers who have become separated before the birth of such children should give to those children the share that would have been their father's. As regards the eunuch and the outcast, if they have been already married,—then, on the birth of their *Kṣetraja* son, this latter becomes entitled to a share in the inheritance.—(*Sarvajñanārāyaṇa.*)

The impotent, the outcast, one suffering from congenital blindness, the deaf, the insane, the mad, the idiot, the dumb, the cripple, the lame and one whose organs are deficient,—these do not receive shares in the property; they are entitled to only food and clothing.—(B) The man who does inherit the property, if he knows the law, should provide food and clothing, to these throughout his life, to the best of his ability.—(C) '*Kathañchana*,'—this implies that the eunuch and the rest are not fit for marriage; if somehow, there arises a desire for marriage (and they marry), then, on the birth of their *Kṣetraja* son—and in the case of the others, on the birth of their sons,—they become entitled to a share in the property.—(*Kullūka.*)

'*Jaḍa*'—is one who is devoid of ambition.—'*Nirindriyāḥ*'—those without hands and such limbs.—(B) All these eight are to be supported; this has been declared by Yājñavalkya also.—(C) If the eunuch and the rest have a desire to obtain children and marry for that purpose,—if they have issue, then their *Kṣetraja* and other sons are entitled to inheritance.—(*Rāghavānanda.*)

'*Nirindrīyaḥ*'—devoid of the organs of action, *e.g.*, the lame, the impotent,—the *Kṣetraja* son born to them.—(*Nandana.*)

This text describes those not entitled to partition. Those born blind or deaf are not entitled to any share in the property.—'*Unmatta*'—is one who is suffering from trembling and the like, from the obsession of planets, and also from the disorders of the three humours of the body, wind, bile and phlegm.—'*Jaḍa*'—is one whose mind is deranged, and who is incapable of ascertaining what is good for himself.—'*Nirindrīyāḥ*'—Those who have lost a sense-organ by disease.—(C) '*Utpannatantūnām*'—of the sons. For the eunuch the only son possible is the *Kṣetraja*; for others, the *body-born* son also is possible.—(*Rāmachandra.*)

Inasmuch as the eunuch and the rest are spoken of as 'having wife,' it follows that their *Upanayana* also has to be performed. It will not be right to

argue that—"The text (C) is with reference to the case where the man has already married, and subsequently become struck by blindness and the other disabilities."—If that were so, then 'the born blind' should not have been mentioned in the foregoing verse (A). It may be that the blind and the rest, not having gone through the ceremony of initiation (*Upanayana*) and marriage, are not entitled to the performance of sacrifices; but they are perfectly entitled like a *Shūdra*, to the performance of works of public utility. For this reason, the fact of their being not entitled to a share in the property, is due, not to their being not entitled to work, but to the words of the text itself.—(*Aparārka*, p. 750.)

(A) '*Nirindriyāḥ*'—those who, as a result of some disease, have lost a sense-organ. These—the eunuch and the rest—do not share in the property; they have to be supported by proper food, clothing and gifts.—(B) '*Atyantam*'—throughout life. The fact of their being not entitled to inheritance would be right only if it referred to cases where the blindness or the like has appeared before, not after, partition. Even after partition, if the defect of blindness and the like is removed by medication, the man does become entitled to his share in the inheritance. In the terms '*Patita*' and the rest, no significance attaches to the masculine gender; so that even in the case of wife, daughter, mother and others, if they happen to be blind and so forth, they are not entitled to a share in the property.—(*Mitākṣarā*, pp. 836–838.)

(A) '*Nirindrīya*'—one who has lost a sense-organ through disease or such causes.—These are not to receive shares in the property, but have to be supported.—(B) '*Sarveṣām*'—of all those who are entitled to a share in the property;—'*Atyantam*'—as long as they live.—These persons are not to share in the property only if one of the said defects appears in some form, before partition,—and not if, though before partition, they suffered from the said disabilities, yet, after the partition they got rid of the disabilities by medication,—or if they have performed the necessary expiatory penance. In this latter case, the person concerned becomes entitled to a share in the property, in accordance with the rule that 'if a son is born after partition of a wife of the same caste as oneself he is entitled to inheritance.'—In the terms '*Patita*' and the rest, no significance attaches to the masculine gender, appearing as it does in the subject; hence mother, wife, daughter and the rest also, if suffering from disability, are not entitled to shares in the property.—The eunuch and the rest are themselves disinherited,—not their sons and others, if they are not suffering from a disability.—(*Madanapārijāta*, p. 682.)

In the compound '*Jātyandha*,' the term '*Jāti*' indicates the incurability of the disability, and not that it must be *congenital*.—'*Jaḍa*'—one who cannot discriminate between others and himself.—'*Nirindriya*,' *i.e.*, the lame and the like, who are not entitled to the performance of the religious rites prescribed in *Shruti* and *Smṛti*.—(B) '*Sarveṣām*,' of the eunuch and the rest.—'*Atyantam*,'—as long as they live.—(C) In the compound '*Klībādīnām*,'—'of the eunuch and the rest,'—the '*Klība*,' 'eunuch,' is meant to be included; as the eunuch is absolutely unable to beget a child. The author of the *Prakāsha*, however, holds that '*Klība*,' here stands for such impotence or incapacity to beget children as is due to a curable defect.—'*Tantu*,'—issue.—(*Vivādaratnākara*, p. 488.)

'*Jaḍamūka,*'—one who is dumb, while being an idiot.—'*Eunuch*'—one who remains impotent even after medication. Some people hold that the compound '*Klībādīnām*'—is not meant to include the *Klība, Eunuch,* himself.—(*Vivādachandra,* 21. 1-2.)

Here Manu mentions those who are not entitled to inheritance.—'*Nirindriyāḥ*'—whose sense-organs have become defective.—(B) '*Atyantam,*'—throughout life.—(*Parāsharamādhava,* pp. 366-367.)

'*Nirindriya*'—is one who has lost his organ through disease; and hence differs from the 'eunuch.' Some people have explained the term to mean 'persons devoid of hand, feet and such limbs.' These, the eunuch and the rest, do not receive shares in the inheritance; but they have to be supported with food and clothing.—(B) '*Atyantam,*'- throughout life.—Of the outcast and the person who has committed a minor offence, the disability to inherit lasts only till the requisite expiatory penance has been performed. If, through arrogance, they do not perform the penance, they fall.—This disability to inherit applies to them only if they have had the said defects before partition; after the partition has been done,—if the defects appear,—the shares that they received at the partition shall certainly not be taken away from them, as there is no authority for such a course. If subsequently, the defect is removed, the persons become entitled to receive shares,—so says Vijñāneshwara; and this is the right view; because the disability to inherit was based entirely on the presence of the defect; and the case of these persons would stand on the same footing as that of the son born to one (from a wife of his own caste) after partition, who is entitled to inherit.—In the terms '*Patita*' and the rest, no significance attaches to the masculine gender; just as in the sentence '*Brāhmaṇo na surām pibēt*'; hence the disability mentioned in the present texts would apply to the case of the 'wife, daughter, etc.' who have been declared to be entitled to inheritance.—(C) '*Tantu*'—child.—(*Vīramitrodaya,* pp. 708—710.)

(A) '*Nirindriyāḥ*'—those whose olfactory and other organs have been destroyed by disease and such other causes.—(B) '*Atyantam*'—throughout life.—(*Smṛtichandrikā,* pp. 6, 9, 632.)

(A) '*Nirindriyāḥ*'—devoid of the olfactory and other organs. (B) These disinherited persons should be supported by those who have taken the property.—(*Vyavahāramayūkha,* pp. 163, 164).

'*Nirindriyāḥ*'—devoid of hands, legs and such limbs. The upshot of the whole is that those who are not entitled to the performance of the *Shrauta* and *Smārta* rites are not entitled to inheritance. Their sons, however,—except the sons of outcasts—are entitled to inheritance.—(*Vivādachintāmaṇi,* p. 207.)

'*Tantu*'—child. It might be argued that the impotent person can have no generative potency,—and that the dumb and the rest, not having read the Veda and not having their *Upanayana* performed, would be outcasts; and hence there would be no possibility for these to be married. This will not be right; because a son may be born to the impotent man with the help of another man; and the rest, even though they may not have their *Upanayana* performed, would be only like *Shūdras,* and not *outcasts.* Hence all these persons could have sons—body-born as well as '*Kṣetraja*'; and these sons should be entitled to the inheritance.—(*Dāyabhāga,* p. 104.)

109. याज्ञवल्क्य 2. 140—142.]

(A) क्लीबोऽथ पतितस्तज्जः [*v.l.*, पतितस्तत्सुतः क्लीबः] पङ्गुरुन्मत्तको जडः । अन्धोऽचिकित्स्यरोगाद्या [*v.l.*, रोगी च] भर्तव्यास्तु निरंशकाः ॥

(B) औरसक्षेत्रजास्त्वेषां निर्दोषा भागहारिणः ।

(C) सुताश्चैषां प्रभर्तव्या यावद्वै [*v.l.*, च] भर्तृसात्कृताः ॥

(D) अपुत्रा योषितश्चैषां भर्तव्याः साधुवृत्तयः ।
निर्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च ॥

(A) The impotent, the outcast, the son born of the outcast, the lame, the insane, the idiot, the blind, one suffering from an incurable disease, and others having no shares, have to be maintained.—(B) The *Aurasa* and *Kṣetraja* sons of these, if free from defects, receive shares in the property.—(C) The daughters also of these should be maintained till they have been made over to their husbands.—(D) The wives of these, having no sons, should be maintained, if they are well-behaved : if they are misbehaved and hostile, they should be turned out.—(*Yājñavalkya*, 2. 140—142.) [Quoted in *Smṛtichandrikā*, pp. 631—634; *Madanapārijāta*, pp. 681—683; *Vivādaratnākara*, pp. 488-489; *Vivādachintāmaṇi*, p. 207; *Vivādachandra*, 21. 1—3; 21. 1—7; *Parāsharamādhava*, pp. 366, 367; *Vīramitrodaya*, pp. 710, 711; *Dāyabhāga*, pp. 102, 104; *Vyavahāramayūkha*, pp 162—166; *Vibhāgasāra*, 5. 2—6.]

NOTES

The impotent man and the rest have no shares in the inheritance, *i.e.*, they should be deprived of their share ; but they are entitled to maintenance.—'*Klība*,' the eunuch, one wanting in virility ;—'*Tajjaḥ*'—born of the *Patita*, outcast ;—though the son of the outcast is also an outcast, yet he has to be mentioned separately ; otherwise, according to the next verse (B), the *son* of the outcast would be entitled to inheritance.—*Paṅgu*,' lame.—'*Unmattaka*,' uffering from insanity,—which is a form of disease.—'*Jaḍa*,'—idiot.—'*Andha*,'—blind.—'*Achikitsyaroga*'—one suffering from an incurable disease.—'*ādya*'—is meant to include those others who have been declared in other *Smṛtis* to be not entitled to inheritance.—(B) '*Eṣām*'—of the eunuch and the rest ;—the *Aurasa* and *Kṣetraja* sons receive the inheritance, if they are free from such defects as being an outcast and the like. The impotent man gets children by means of medication.—(C) The daughters of these have also to be maintained till they are married.—(D) Their married and childless wives should also be maintained, if they are well-behaved ; if they are misbehaved,—or inimical to

their brother-in-law and other relatives, —they should be turned out of the house. The daughters are to be maintained even though they may have been born of outcasts.—(*Aparārka.*)

'*Tatsutaḥ*' (*v.l.*, for '*Tajjaḥ*')—born of the outcast..—'*Unmattaḥ*'—obsessed by evil planets.—'*Jaḍaḥ*'—always devoid of intelligence.—'*Achikitsyarogī*'—suffering from leprosy or such other foul and incurable disease.—The particle '*cha*' serves to include the deaf and the rest mentioned in other *Smṛtis*.—Some people have held the view that the 'lame' and the rest stand for all those who are not entitled to the performance of the *Agnihotra* and other rites.—But this is not right; because wealth is meant for the man; and because the illiterate person, who is not entitled to perform any rites, has been declared to be fit for holding wealth; as is clear from such texts as 'the learned shall not give of his self-acquired property to the unlearned, unless he wishes to do so'—and 'the unlearned shall divide the property equally.' Hence the fact that they are not entitled to inheritance rests upon the express prohibition in the texts themselves, not on the ground of their being incapable of performing sacrifices. Or their disability to inherit may be regarded as being due to their present disease, etc., being indicative of heinous sins committed in the past lives. The long established custom is that even the blind and the rest, if they are not outcasts, do inherit the property that belonged to their grandfather and other ancestors. The conclusion therefore is that the text only reiterates the propriety of the course that these persons should not use the property for any other purpose save their maintenance.—(*Vishvarūpa.*)

(A) Here we have an exception to the general rule regarding the son, the wife and other members of the joint family inheriting the property of the deceased.—'*Klība*'—one belonging to the third (neuter) gender.—'*Patita,*' the one who has committed a heinous crime, like the murdering of a Brāhmaṇa.—'*Tajja,*' born of the outcast.—'*Paṅgu,*' lame.—*Unmattaka,*' oppressed by insanity due either to the disorders of bile, wind and phlegm, or to the obsession of evil planets.—'*Jaḍa,*' whose mind is disordered, *i.e.*, who is unable to determine what is good and what is bad for himself.—'*Andha,*' deprived of eyes.—'*Achikitsyaroga,*' suffering from some incurable disease, like consumption.—The term '*ādya*' includes the following—one who has taken to another life-stage, one who is inimical to his father, one who has committed minor sins, the deaf, the dumb, the person deficient in sense-organs. These have been mentioned by Vashiṣṭha and Nārada; also Manu (9. 201).—These, the impotent and other persons '*have no shares,*' *i.e.*, they do not receive the inheritance; they have only got to be 'maintained' by being provided with food and clothing. If they are not maintained, the person who has inherited the property becomes liable to be treated like an outcast, as declared by Manu (9. 202). This disability to inherit would be right only in cases where the defects (to which the disability is due) have been present from before the time of partition, and not if these appear after the partition. Even after the partition, if the defect is removed by medication, the man does become entitled to the inheritance.—In the terms '*patita*' and the rest, no significance attaches to the masculine gender; hence the wife, the daughter, the mother and other females also should be regarded as not entitled to inheritance, if they have any of the disabling

defects enumerated.—(B) The assertion of 'the disability to inheritance' of the impotent and other persons may give rise to the notion that the sons also of these persons are debarred from inheritance; it is with a view to this that the next verse (B) is added. Of these impotent and other persons, the '*Aurasa*' or '*Kṣetraja*' sons, if 'free from defects,'—*i.e.*, free from impotence and such other defects as are disabilities in the matter of inheritance,—'receive shares' in the property. In the case of the impotent person, only '*Kṣetraja*' sons are possible; in that of others, '*Aurasa*' also. The mention of these two kinds of sons serves to exclude the other kinds.—(C) A special rule is laid down in (C) in regard to the daughters of the impotent and other persons. Until they have their marriage-sacrament performed, their daughters are to be maintained; the particle '*cha*' implies that the performance of their sacraments also is essential.—(D) This lays down the special rule regarding the wives of the impotent and other persons. The wives of these persons, if they are 'well-behaved,' of good character, should be maintained; the ill-behaved have to be turned out; those who are inimical are also to be turned out; but these have to be maintained, if they are not ill-behaved; and the mere fact of their being 'inimical' will not deprive them of maintenance.—(*Mitākṣarā.*)

(A) The term '*Atha*' includes one who has been born deaf; and the term '*ādya*' includes the dumb, 'one hostile to his father' and others;—these being mentioned in Manu (9. 201), and in Nārada (13. 21).—'*Tajja,*' born of the outcast.—'*Paṅgu*' lame.—'*Jaḍa,*' of low intelligence.—(B) The impotent and other persons having been declared to be not entitled to inheritance, it would be seen that their sons also are not entitled to it and that it is not necessary to maintain their daughters and wives;—with a view to preclude such a notion the second and third verses have been added. The '*Kṣetraja*' sons of the impotent and others,—the '*Aurasa*' sons of those who are not impotent,—if both of these are free from the defects of impotence and the like,—become sharers in the inheritance.—(C) The '*Kṣetraja*' daughters of these impotent and other persons,—*i.e.*, such as are not sexless,—should be as carefully maintained as one's own daughters, until they have been given to their husbands.—(D) The wives also of these impotent and other persons—those that had been married to them before their impotence was definitely known,—if they are 'well-behaved,' of good character,—are to be maintained. If they are 'ill-behaved' or very 'inimical' or hostile, they should be turned out of the house. The particle '*cha*' in the second verse implies that the daughters should also have their sacraments performed; and the '*cha*' in the third verse includes such women as are 'given to drinking wine' and such vices;—and the particle '*eva*' serves to preclude the notion that such women should be maintained.—(*Vīramitrodaya-Tīkā* on *Yājña.*)

'*Tajja*'—born of the outcast.—The term '*ādya*' includes those mentioned elsewhere.—'*Should be maintained*'—by those who have inherited the property; Viṣṇu having clearly declared that 'they have to be supported by those who have received the property.'—(B) What is said in regard to the '*Kṣetraja*' son must be taken as applicable to the *Dvāpara* and other ages, as such a son has been forbidden for the *Kali* age.—(C) '*Sutāḥ*, daughters,—'*eṣām*,' of those who have been declared to be

not entitled to inheritance;—'*shall be maintained*'—by those who have taken the ancestral property of the disinherited persons;—the daughters shall be maintained in the same manner as their disinherited fathers themselves;—but not as long as they live,—only till they have been married.—(D) Of the said disinherited persons, the married wives also,—if they are well-behaved,—shall be maintained by those who have taken the ancestral property of the disinherited persons, in the same manner in which they maintain those persons themselves.—If they are ill-behaved, or are hostile to the maintainer, they should be turned out of the house. Those who have been turned out for misbehaviour are not to be supported; but those turned out on account of hostility shall receive maintenance.—(*Smṛtichandrikā*, pp. 631 and 634.)

(A) '*Tajja*'—born of the outcast who has not performed the requisite expiatory penance.—'*Paṅgu*,' lame.—'*Unmattaka*,' incurably suffering from insanity due to the disorders of wind, bile and phlegm and to the obsession of evil planets.—'*Jaḍa*,' of defective intelligence, incapable of discriminating between right and wrong.—'*Achikitsyaroga*'—suffering from an incurable serious disease.—The term '*ādya*,' includes 'one who is hostile to his father' and the rest mentioned by Nārada.—(*Madanapārijāta*, p. 681.)—(B) Of the impotent person, only a '*Kṣetraja*' son is possible; of the others, both '*Kṣetraja*' and '*Aurasa*.' The special mention of these two kinds of sons implies that the other kinds of sons are not entitled to inheritance; but the '*Putrikā*,' the 'appointed daughter' is included under the '*aurasa*' as she has been declared to be 'equal to the *aurasa*.'—(C) The daughters are to be maintained till their marriage.—(D) The childless wives of the 'impotent and other persons,' if well-behaved,—of good character,—should be maintained; those who are ill-behaved should be turned out; and those 'hostile' shall also be turned out, but shall receive maintenance, as these are not tainted with misbehaviour.—(*Ibid.*, p. 683.)

(A) '*Tatsutaḥ*.' (*v.l.*, '*tajjaḥ*')—the son of the outcast born after he had become an outcast.—'*Jaḍa*,' of deficient intelligence.—'*Achikitsyaroga*'—suffering from an incurable disease, like leprosy.—The term '*ādya*' includes all those other persons who have been declared by other sages to be 'not entitled to inheritance,' but entitled to maintenance.—(B) The impotent and others having been declared to be not entitled to inheritance, it might be taken for granted that their sons also are not entitled to it; hence the sage has added the second verse.—(D) The third verse declares what is to be done regarding the wives of those persons.—'*Hostile*,' the 'hostility' meant here is the proneness to administer poison and inflict such injuries, not mere *quarrelsomeness*.—(*Vivādaratnākara*, pp. 488-489.)

(A) The man suffering from such incurable diseases as leprosy and the like.—(B) The '*aurasa*' sons of the outcast meant here are such as were born before the man became an outcast; those of the others may be such as may be born subsequent to the appearance of the disabilities.—(D) '*Eṣām*,' of the impotent and other persons.—'*Pratikūlāḥ*,'—prone to poisoning and other mischief.—(*Vivādachintāmaṇi*, p. 207.)

(A) The 'son of the outcast' meant here is the one born after the man became an outcast.—'*Achikitsyarogārta*,' the person suffering from such incurable diseases as leprosy and the like.—(*Vivādachandra*, 21. 1—4.)—

(D) The childless wives of the disinherited persons are to be maintained.—(*Ibid.*, 21. 1—7.)

(A) '*Tajjaḥ*,'—born of the outcast.—The term '*ādi*' includes the dumb and the rest.—These do not receive any share of the inheritance; they are only to be supported with food and clothing.—(B) Of these disinherited persons, only the *Kṣetraja* and *Aurasa* sons shall receive shares,—not the adopted and other kinds of sons.—(C) The daughters of the disinherited persons shall be maintained till their marriage, and they shall be married also;—(D) their wives, if well-behaved, shall be maintained as long as they live.—(*Parāshara-mādhava*, pp. 366-367.)

(A) '*Tajjaḥ*'—born of the outcast.—In the case of the impotent and the blind, if they have been so from birth, they are not entitled to any share; if the disability has come in later, then on their being cured by medication, they do become entitled to receive shares in the property out of what may have been left after the settlement of all assets and liabilities.—The term '*ādya*' includes the person who has entered another life-stage, one who is hostile to his father, one who has committed a minor sin, the deaf, the dumb, one who is deficient in his organs,—as has been declared by Nārada and Vashiṣ-tha.—(B) Even though the impotent and the rest are not entitled to inherit, their sons are not debarred from inheritance.—'*Free from defects*,'—*i.e.*, those defects which have been indicated in the preceding verse as bars to inherit-ance.—For the impotent, only the *Kṣetraja* son is possible; for others, the *Aurasa* also. These two kinds of sons have been specified for the purpose of precluding the other kinds.—(*Vīramitrodaya*, pp. 710-711.)

(A) '*Paṅguḥ*'-one who cannot walk on his legs.—Even though these are debarred from inheritance, they have to be maintained,—with the exception of the outcast and his son, who do not deserve maintenance, as declared by Devala.—The '*Klība*' has been defined by Kātyāyana as 'one whose urine gives out no froth, whose excreta sinks in water, whose penis is devoid of erection and semen.'—(*Dāyabhāga*, p. 102.)—(B) Of these, the *Kṣetraja* and *Aurasa* that may be there—who are free from the defects of impotence and the rest,—are to receive shares in accordance with the share of their father.—(C) Their daughters have to be maintained till their marriage;—(D) so also their childless wives, as long as they live.—(*Ibid.*, p. 104.)

The persons debarred from inheritance are enumerated here.—'*Tajjaḥ*,' born of the outcast. If, even after partition, the impotence and other dis-abilities are cured, the persons receive their shares; just like persons born after partition.—(*Vyavahāramayūkha*, pp. 162-163.)—(C, D) *Yājñavalkya* lays down special rules regarding the daughters and wives of the said persons.—If the women are ill-behaved, they have to be turned out, without maintenance; if they are only 'hostile' they are simply to be turned out, but should receive maintenance;—so say *Madana* and others.—(*Ibid.*, p. 166.)

One who is suffering from an incurable disease is not entitled to inherit-ance.—The legitimate sons of these—born before, not after, their being an outcast, etc.,—deserve to inherit property; those born after the outcasting are entitled to maintenance.—'*Pratikūlaḥ*,' bent upon depriving him of his life by means of poison and such other means.—(*Vibhāgasāra*, 5. 2—9.)

110. गौतम 28. 43—45.] जडक्लीबौ तु भर्तव्यौ। अपत्यं जडस्य भागार्हम्। शूद्रापुत्रवत् प्रतिलोमासु।

The idiot and the eunuch shall be supported. The offspring of the idiot deserves a share.—Those born from wives of higher castes (than their husbands) are to be treated like the sons of the Shūdra wife (of a Brāhmaṇa).—(*Gautama*, 28. 43—45.) [Quoted in *Vivādaratnākara*, p. 491.]

NOTES

What the use of the term 'deserves' implies is that he receives a share of the inheritance only if he is otherwise entitled to it,—not merely on the ground of his being the child of an idiot.—'*Shūdrāputravat*'—those born of women of the higher castes married to men of lower castes,—if they are willing to serve—should receive a living; just like the son born to a Brāhmaṇa from a *Shūdra* wife.—(*Vivādaratnākara*, p 491.)

111. विष्णु 15. 32—35.] पतितक्लीबाचिकित्स्यरोगविकलास्त्वभागहारिणः। रिक्थग्राहिभिस्ते भर्तव्याः। तेषां चौरसाः रिक्थग्राहिणः, न तु पतितस्य।

Outcasts, eunuchs, persons suffering from an incurable disease, or maimed, do not receive a share; they should be maintained by those who have received the inheritance. Their *Aurasa* sons shall receive a share, but not the sons of an outcast.—(*Viṣṇu*, 15. 32—35.) [Quoted in *Vivādaratnākara*, p. 490.]

NOTES

The sons born to the outcast after the commission of the degrading sin, and the sons born to wives married in the inverse order, are not entitled to receive a share, (even in the grandfather's (*i.e.*, ancestral) property.—'*Amshagrāhibhiḥ*,' by those who have taken the property.—(*Vivādaratnākara*, p 490.)

112. बौधायन 2. 38—41.] अतीतव्यवहारान् ग्रासाच्छादनैर्बिभृयुः। अन्धजडक्लीबव्यसनिव्याधितादींश्चाकर्मिणः—पतिततज्जातवर्जम्।

They shall support, with food and clothing, all minors; as also the blind, the idiot, the impotent, the distressed, the invalid and those without livelihood; excepting the outcast

and his offspring.—(*Baudhāyana.*) [Quoted in *Aparārka*, p. 750; *Vivādaratnākara*, p. 490; *Vyavahāramayūkha*, p. 165.]

NOTES

'*Akarmiṇaḥ*'—Those who have no means of livelihood, such as agriculture and the like.—'*Patitatajjātavarjam*'—excepting the outcast and his children, all others should be supported.—(*Aparārka*, p. 750.)

'*Atītavyavahārān*'—those who have not attained majority.—'*Akarmiṇaḥ*'—those not entitled to the performance of religious acts.—As regards 'the outcast and his children,' all kinds of transaction with them having been forbidden, the act of supporting them also becomes forbidden.—(*Vivādaratnākara*, p. 490.)

Madana and others have held that the renunciate and his offspring also do not deserve to be supported.—(*Vyavahāramayūkha*, p. 165.)

113. नारद 13. 21.] पितृद्विट् पतितः षण्डो यश्च स्यादपपात्रित : [*v.l.*, (*a*) स्यादौपपातिकः (*b*) स्यादपयात्रितः ।]
औरसा अपि नैतेंशं लभेरन् क्षेत्रजाः कुतः ॥

One hostile to his father, an outcast, one impotent, or excommunicated [*v.l.*, one guilty of a minor offence],—such sons, even when *Aurasa*, shall not receive a share; how then could the *Kṣetraja* sons receive it?—(*Nārada*, 13. 21.) [Quoted in *Aparārka*, p. 749; *Mitākṣarā*, p. 836; *Smṛtichandrikā*, p. 629; *Vivādaratnākara*, p. 489; *Vivādachintāmaṇi*, p. 207; *Vivādachandra*, 21. 1—9; *Madanapārijāta*, p. 682; *Parāsharamādhava*, p. 366; *Vīramitrodaya*, p. 710; *Dāyabhāga*, p. 103; *Vyavahāramayūkha*, p. 163; *Vibhāgasāra*, 5. 2—10.]

NOTES

'*Pitṛdviṭ*'—one who injures his father.—'*Aupapāṭikaḥ*' (*v.l.*, one guilty of a minor offence).—(*Aparārka.*)

'*Apapātritaḥ*'—one who has been declared to be 'unfit for association,' *i.e.*, one who has been expelled by his relatives.—(*Smṛtichandrikā*, p. 629.)

'*Pitṛdviṭ*'—one who bears ill-will towards his father,—such 'ill-will' culminating in the killing of the father, if the father is alive,—and in not making the water and other offerings to him, if he is dead.—'*Apapātritaḥ*'—excommunicated on account of some such crime as killing the king. The author of the *Prakāsha* however has read '*Aupapātikaḥ*' and explained it to mean 'one guilty of minor offences.'—(*Vivādaratnākara*, p. 489.)

'*Pitṛdviṭ*,'—*i.e.*, Beating the father and otherwise ill-treating him during his lifetime,—and unwilling to perform his *Shrāddha* and other rites, on his death.—(*Vivādachintāmaṇi*, p. 208.)

The '*hostility to the father*' would consist in beating (or killing) him during lifetime, and not making the water and other offerings to him, after death.—(*Vivādachandra*, 21. 1–9.)

'*Apapātritaḥ*'—Excommunicated by his relatives on account of such heinous crimes as hostility to the king—so says *Madana*.—But the right reading is '*Apayātritaḥ*,' meaning 'one who has undertaken a forbidden journey,' such as going on business to another island by sea on boats; association with such a traveller being forbidden in the *Kali* age. The other reading and explanation cannot be right, because no texts have prescribed 'excommunication' as a penalty for hostility to the king.—(*Vyavahāramayūkha*, p. 163.)

'*Pitṛdviṭ*'—One who makes his father unhappy by causing him hurt; and who has ceased to offer *shrāddha* and other offerings. –(*Vibhāgasāra*, 5. 2—10.)

114. देवल] (A) मृते पितरि न क्लीवकुष्ठ्युन्मत्तजडान्धकाः ।
पतितः पतितापत्यं लिङ्गी दायांशभागिनः ॥
(B) तेषां पतितवर्जानां [*v.l.*, वर्जेभ्यो] भक्तवस्त्रं प्रदीयते ।
(C) तत्सुताः पितृदायांशं लभेरन् दोषवर्जिताः ॥

(A) On the death of the father, the impotent, the leper, the insane, the idiot, the blind, the outcast, the child of the outcast, and the religious hypocrite [or life-long hermit] are not entitled to share in the inheritance.—(B) All these, with the exception of the outcast, have to be provided with food and clothing.—(C) Their sons, if free from defects, shall receive shares in their father's inheritance.—(*Devala*.) [Quoted in *Vivādaratnākara*, pp. 489-90; *Vivādachintāmaṇi*, p. 208; *Vivādachandra*, 21. 1–6; *Smṛtichandrikā*, pp. 628, 632, 633; *Parāsharamādhava*, p. 367; *Dāyabhāga*, p. 102; *Vīramitrodaya*, p. 711; *Smṛtitattva* II, p. 172; *Vyavahāramayūkha*, p. 165; *Vibhāgasāra*, 6. 1. 1.)

NOTES

'*Mṛte pitari*,'—*Even* on the death of the father.—'*Liṅgī*,—one who is too much addicted to the habit of practising religious hypocrisy.—(*Vivādaratnākara*, p. 490.)

(A) '*Mṛte*'—This is only by way of illustration.—'*Liṅgī*,' one who is too much addicted to assuming disguises.—(C) '*Defects*,'—such as tend to debar one from inheritance.—(*Vivādachintāmaṇi*, p. 208.)—(B) For the outcast, no maintenance need be provided.—(C) The son of the disinherited man,

if he is himself free from defects, is entitled to inheritance.—(*Vivādachandra*, 21. 1—6.)

On the death of their father, the 'impotent' and the rest do not share in the property.—'*Lingī*,' the life-long hermit; the hermit meant here is one belonging to one of the heretic sects, the *Kṣapaṇaka*, the *Pāshupata* and the like.—The phrase '*on the death of the father*' is meant to indicate the time of partition; so that even when the father is making a partition of his property during his lifetime, the impotent and other persons do not receive any shares in the property. That is why Āpastamba has declared—'During his lifetime, the father shall divide the property equally among his sons, excluding the impotent, the insane and the outcast.'—(*Smṛtichandrikā*, p. 629).—(B) Here we have an exception to the general rule that 'all disinherited persons should receive maintenance'; the 'son of the outcast' also is to be included under this exception, as he also is an outcast.—(*Ibid.*, p. 632).—(C) '*Tatputrāḥ*,' sons of the persons debarred from inheritance.—'*Free from defects*'—free from impotence and such other defects as are disabilities to inheritance.—'*Father's inheritance*,' *i.e.*, the grandfather's property. This text should not be taken to mean that "the 'son of the outcast' also would be entitled to inherit the grandfather's property"; because the outcast's son is excluded by the qualification 'free from defects,' as the male child of an outcast has been declared to be an outcast.—(*Ibid.*, p. 633.)

(B) The outcast is not entitled to maintenance. The term 'outcast' here includes the 'outcast's son' also.—(C) The sons of those debarred from inheritance are entitled to inheritance; of those who have been debarred from inheritance, only the '*Aurasa*' and '*Kṣetraja*,'—if free from impotence and other disabilities,—are entitled to inheritance, not the 'adopted' and other kinds of sons.—(*Parāsharamādhava*, p. 367.)

(A) All those debarred from inheritance are to be maintained, except the outcast and the outcast's son.—'*Liṅgī*,' the wandering mendicant and the like. The term '*outcast*' includes the outcast's son also, as the latter also is an 'outcast' by reason of being born of an outcast.—(*Dāyabhāga*, p. 102.)

'*Liṅgī*'—the wandering mendicant and the like.—The term '*outcast*' includes the outcast's son also; the latter also being an 'outcast' by reason of his being born of an outcast.—(*Vīramitrodaya*, p. 711.)

'*Jaḍa*,' one who has no enthusiasm in the performance of religious duties. '*Andhaḥ*,'—congenitally blind.—'*Liṅgī*,'—one who has assumed the disguise of an ascetic.—(*Smṛtitattva* II, p. 172.)

'*Liṅgī*,'—one who is wearing a forbidden sign.—(*Vyavahāramayūkha*, p. 165.)

'*Death*' is mentioned only by way of illustration.—'*Liṅgī*,' a religious hypocrite.—(*Vibhāgasāra*, 6. 1—3.)

115. अर्थशास्त्र II, p. 35.] पतितः पतितात्जातः क्लीबश्चानंशाः—
जडोन्मत्तान्धकुष्ठिनश्च । सति भार्यार्थे तेषामपत्यमतद्विधं भागं हरेत् ।

तेषां तत्कृतदाराणां लुप्ते प्रजनने सति ।
सृजेयुर्बान्धवाः पुत्रान् तेषामंशान् प्रकल्पयेत् ॥

The outcast, the son born of the outcast, and the impotent are not entitled to shares in the property ; as also the idiot, the insane and the leper. If they are married, their children,—if they do not suffer from the same disabilities,—shall receive their share.

If, after marriage, they lose their generative organs, their relatives shall beget sons for them, and consign to these sons shares in the property.—(*Arthashāstra* II, p. 35.)

116. वसिष्ठ] पतितोत्पन्नः पतितो भवतीत्याहुः—अन्यत्र स्त्रियाः ।
सा हि परगामिनी ।

One born of an outcast is an outcast ; not so females, because the female goes to another (family).—(*Vashiṣṭha.*) (Quoted in *Aparārka*, p. 751.)

NOTES

The daughters of outcasts have got to be maintained and married (and not to be treated as outcasts). —(*Aparārka*, p. 751.)

117. आपस्तम्ब] जीवन्पुत्रेभ्यो दायं पिता विभजेत् समम्—क्लीबमुन्मत्तं
पतितं च परिहाप्य ।

During his lifetime the father shall divide the inheritance equally among his sons, excluding the impotent, the insane and the outcast.—(*Āpastamba.*) (Quoted in *Smṛtichandrikā*, p. 629.)

NOTES

The particle ' *cha* ' is meant to include the leper, the idiot and the blind.—' *Parihāpya*,' having excluded.—(*Smṛtichandrikā*, p. 629.)

118. वसिष्ठ 71. 52—54.] अनंशा आश्रमान्तरगताः क्लीबोन्मत्तपतिताश्च ।
भरणं क्लीबोन्मत्तानाम् ।

Those who have entered other life-stages (than that of the householder) have no shares; nor the impotent, the insane and the outcast; the impotent and the insane have to be supported.—(*Vashiṣṭha.*) (Quoted in *Aparārka*, p. 750; *Mitākṣarā*, pp. 823, 836; *Madanapārijāta*, p. 682; *Vivādaratnākara*, p. 491; *Vivādachintāmaṇi*, p. 208; *Parāsharamādhava*, p. 365; *Vyavahāramayūkha*, p. 165; *Vibhāgasāra*, 6. 1--3.)

NOTES

'*Other life-stages*,'—*i.e.*, life-stages other than that of the householder.—(*Aparārka*, p. 750.)

The text means that persons in the other life-stages have no connection with property.—(*Mitākṣarā*, pp. 823-824.)

'*Āshramāntara*,'—*i.e.*, the Life-long student, the Hermit and the Wandering Mendicant.—(*Madanapārijāta*, p. 682.)

'*Āshramantara*,' a life other than that of the householder.—(*Vibhāgasāra*, 6. 1--3.)

Āshramāntara '—Life-stages other than that of the householder. (*Vivādaratnākara*, p. 491, and *Vivādachintāmaṇi*, p. 208.)

What is meant is that a man in one life-stage cannot inherit the property of a man in another life-stage; it is not meant that people in the same life-stage shall not inherit one another's property.—(*Parāsharamādhava*, p. 365.)

The mention of only two as to be supported serves the purpose of precluding the others.—(*Vyavahāramayūkha*, p. 165.)

119. मनु 9. 143-44.] (A) अनियुक्तासुतश्चैव पुत्रिण्याप्तश्च देवरात् ।
उभौ तौ नार्हतो भागं जारजातककामजौ ॥
(B) नियुक्तायामपि पुमान् नार्यां जातोऽविधानतः ।
नैवार्हः पैतृकं रिक्थं पतितोत्पादितो हि सः ॥

(A) The offspring of a wife not "authorised,"—and the offspring obtained from her younger brother-in-law by a woman who has already got a son,—both of these are undeserving of the share; one being born of an adulterer, and the other being the product of lust.—(B) The male child of an "authorised" woman, if not begotten in the prescribed manner, is not entitled to the paternal property; as he is procreated by outcasts.—(*Manu*, 9. 143-144.) [Quoted in *Smṛtichandrikā*, p. 630; *Parāsharamādhava*, p. 368.]

NOTES

It has been declared that, when the husband dies without male issue, the wife should obtain the sanction of her elders for the begetting of a son. This is reiterated here. If a woman is *not authorised* by her elders, and yet, being anxious for a son, she begets one,—under the impression that the child would be the *Kṣetraja* son of her husband and hence entitled to inherit his property,—the son born in this manner shall *not* inherit the father's property, because a son is called '*Kṣetraja*' only when he has been begotten in the prescribed manner, and it is only then that he inherits the property of the 'owner of the soil' (his dead father). It is for this reason that the present text denies the inheriting capacity of the son of the woman not duly 'authorised'; but it does not forbid his offering of the funeral cake.—The text uses the term '*Suta*,' 'offspring,'—not '*Putra*,' 'son'; because the child referred to is not in accordance with the law relating to the 'adopted' and other sons. Among twice-born people such issues are entitled to mere subsistence, not to the inheritance of property. It is the duty of the legitimate son to provide for the maintenance of the unlawfully begotten sons; but these latter are not entitled to any inheritance in the property. From what is said here it follows that the issue of the unauthorised woman, not entitled to the property of his lawful father, does become a sharer in that of the person from whose seed he has been born; and the share in this case would be just enough for his subsistence.—Similarly also in the case of the woman who has already got a son,—if the son is alive,—and yet she obtains a son from her younger brother-in-law, even on 'authorisation.'—(B) '*He is not entitled to the property*,'—*i.e.*, he shall not be treated as the *Kṣetraja* son. The sister-in-law and the brother-in-law are both regarded as 'outcasts,' on account of their not having obeyed the restrictions in the begetting of the son; since what is permitted by the scriptures is only such intercourse as is done in strict accordance with the rules laid down.—(*Medhātithi*.)

(A) Even when she has no son, the widow shall take steps to obtain one only with the permission of her elders: even with this permission, it shall be permissible only when she has no son by her own husband.—'*Jārajātakakāmajau*'—both these epithets apply to both the sons mentioned.—'*Kāmaja*,' born of lust, only.—(B) '*Avidhānataḥ*'—without smearing the body with clarified butter and so forth.—'*Paternal property*,'—property either of the owner of the 'soil' or of the owner of the 'seed.'—(*Sarvajñanārāyaṇa*.)

(A) One who has been born without the sanction of the elders,—also one who has been born to a widow who has already got a son, from her younger brother-in-law, even though duly authorised, through sheer lust,—both of these being respectively '*born of an adulterer*' and '*born of lust*,' are not entitled to inherit.

(B) Even when the widow has been authorised, if the son is born to her, without the sanctioned procedure being adopted, that son is not entitled to inherit the property of the owner of the 'soil'; because he has been begotten by an outcast,—the persons begetting children in contravention of the prescribed rules having been declared to be outcasts.—(*Kullūka*.)

(A) A widow without a son, when not authorised,—or even though authorised, if she has a son already;—*Jārajātakaḥ*,' one born of a paramour;—

'*Kāmajaḥ*,' one born of the lust of his mother.—(B) Even when the son has been born after authorisation,—if he has been begotten without the adoption of the prescribed procedure, he is not entitled to inherit the property.—'*Patitotpāditaḥ*,'—born of the younger brother-in-law who has been an outcast by reason of his transgression of the prescribed rule.— (*Rāghavānanda.*)

(A) These texts point out some kinds of *Kṣetraja* sons who are not entitled to inheritance.—(1) The son obtained by the widow from her younger brother-in-law without authorisation; (2) the son so born after authorisation to a widow who has already got a son; the epithets '*Jārajāta*' and '*Kāmaja*' apply to these two sons respectively.—(B) '*Avidhānataḥ*'—without the adoption of the procedure of smearing the body with clarified butter and so forth.—(*Nandana.*)

(B) '*Paternal*' belonging to the father, the owner of the 'soil.' [This commentator adopts the form '*vidhānataḥ*' instead of *avidhānataḥ*; and the meaning of the text according to him would be—'The son born to a widow in due form does not inherit the property of the widow's husband.]'—(*Rāmachandra.*)

'*Jārajātakah*' is the son begotten on an 'unauthorised' woman by a man who is not her husband;—'*Kāmajaḥ*' is the son begotten by the younger brother-in-law on the widow who has already got a son from her married husband—Both these are not entitled to a share in the inheritance. That is to say, the son begotten by an adulterer, and also the son born in contravention of the '*niyoga*' rule, are not entitled to inherit the property of the widow's husband.—(*Smṛtichandrikā*, p. 630.)

120. कात्यायन] (A) अक्रमोढासुतस्त्वृक्थी सवर्णश्च यदा पितुः ।
(B) असवर्णप्रसूतश्च क्रमोढायाश्च यो भवेत् ॥
(C) प्रतिलोमप्रसूता या [*v.l.*, तो यः] तस्याः पुत्रो न रिक्थभाक् ।
ग्रासाच्छादनमात्रं तु [*v.l.*, मत्यन्तं] देयं [*v.l.*, यत् तद्] बन्धुभिर्मतम् ।
(D) बन्धूनामप्यभावे तु पित्र्यं द्रव्यं तदाप्नुयात् ।
(E) अपित्र्यं [*v.l.*, स्वापित्र्यं] तद्धनं [*v.l.*, द्रविणं] प्राप्तं दापनीया न बान्धवाः ।

(A) The son born of a woman married in contravention of the sanctioned order however does obtain inheritance when he is of the same caste as his father; (B) as also the son born of a woman of different caste from her husband, if she has been married in accordance with the sanctioned order—(C) If a woman has been married in the inverse order, her son does not share in the inheritance; the relations shall provide him with food and clothing,—such is the declared view. (D) If

there are no relations, then he shall receive his father's property.—(E) If, however, the property received by his relations is not that belonging to his father, then those relations shall not be made to provide anything for the son.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 491; *Vivādachintāmaṇi*, p. 209; *Dāyabhāga*, p. 103; *Vīramitrodaya*, p. 712; *Vyavahāramayūkha*, p. 164; *Smṛtichandrikā*, p. 632.]

NOTES

The son born of a woman married in contravention of the sanctioned order, if he is of the same caste as the father, 'is entitled to inherit,'—*i.e.*, receives a share in the inheritance.—'*Pratilomaprasūtā*,'—'one married in the inverse order,' *i.e.*, a woman of a higher caste married to a man of a lower caste; the son of such a woman does not share in the inheritance.—'*Food and clothing*,' if he has any relations, they shall give him food and clothing.—If there are no relations, he shall himself take the property.—If however the property that the relations have got is what did not belong to the man's father, then, in that case, they shall not be made to provide even food and clothing for the said son.—(*Vivādaratnākara*, p. 492.)

The meaning of the first line is that even though the son may be one born of a woman married in contravention of the sanctioned order, if he be of the same caste as his father, he shares in the patrimony.—(*Vivādachintāmaṇi*, p. 209.)

'*Bandhubhiḥ*,'—*i.e.*, the relations of the son who has been declared to be not entitled to a share in the property, who have inherited his father's property, should provide that son with food and clothing.—'*Matam*'—such is the declared view of Manu and others.

(E) '*Apitryam, etc.*'—The meaning of this line is as follows: If the relations have not inherited any property of the father of the disinherited son, they shall not be compelled by the king to provide that son with food and clothing. The sense of all this is that for such relations as have not received any property of the father of the disinherited son, it is not necessary to support that son.—(*Smṛtichandrikā*, p. 632.)

This verse (A) lays down the fact of the son mentioned in the preceding texts being entitled to inherit the property if he is of the same caste as the father. (C) But even the said son of the same caste is not entitled to inherit if he is born of a woman married in the inverse order of the caste.—(*Vyavahāramayūkha*, p, 1€4.)

21. कात्यायन] अक्रमोढासुतश्चैव सगोत्रायाश्च [*v.l.*, सगोत्राद्यस्तु] जायते ।
प्रव्रज्यावसितश्चैव न रिक्थं तेषु चार्हति [*v.l.*, तत्र कर्हिचित्] ॥

The son born of a woman married in contravention of the sanctioned order, the son born to a man of a wife belonging

to the same *gotra* as himself, and the apostate from Renunciation, these are not entitled to inheritance.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 750; *Vivādaratnākara*, p. 491; *Vivādachintāmaṇi*, p. 208; *Smṛtichandrikā*, p. 630; *Parāsharamādhava*, p. 367; *Vivādachandra*, 21. 1–5; *Dāyabhāga*, p. 103; *Vīramitrodaya*, p. 712; *Vyavahāramayūkha*, p. 163; *Vibhāgasāra*, 6. 1–4.]

NOTES

'*Akramoḍhāsutaḥ*'—the son of a woman who has been married in contravention of the order of castes and of the order of birth;—and the son born of a woman, born to her from a husband who is of the same *gotra* as herself [the reading adopted being '*Sagotrād yastu jājatē*'].—These persons are not entitled to inherit, because these distinct texts declare this, and not because they are not entitled to the performance of religious acts; because there is no reason why they should not be entitled to the performance of religious acts.—(*Aparārka*, p. 750.)

The term '*Akramoḍhāsutaḥ*' stands for the son born to a man from a wife of a caste different from his own, who has been married to him in contravention of the laws regulating the order in which inter-caste marriages should be performed. That the son of a woman of different caste is meant is clear from the fact that in another text, Kātyāyana has declared the son born of a wife of the same caste as the man to be entitled to heritage.—'*Sagotrād yastu jājatē*'—a son born to a man from a married wife of the same *gotra* as himself.—'*Pravrajyāvasitaḥ*,'—the man who after having become a Renunciate has fallen off from it.—(*Vivādaratnākara*, p. 492.)

The sanctioned 'order' of marriage is that a man should marry a girl of the same caste as himself,—the girl married in contravention of that order is '*Akramoḍhā*.' The second is the son of a woman who, though married in accordance with the sanctioned order, is of the same *gotra* as her husband.—The third is the man who, after having taken to Renunciation (the vow of the wandering mendicant) has fallen off from it. These three are not entitled to inheritance.—(*Vivādachintāmaṇi*, p. 208.)

The son born of a woman who has been married in contravention of the sanctioned order of castes and of birth;—and the son of a man who has married a woman belonging to the same *gotra* as himself, born of that same woman;—and the man who, after having entered the fourth life-stage, has relinquished it.—None of these is entitled to inheritance.—(*Smṛtichandrikā*, p. 630.)

This text declares some other persons to be not entitled to inheritance. (*Parāsharamādhava*, p. 367, where the text is attributed to Yājñavalkya.)

'*Akramoḍhāsutaḥ*,'—the son of a woman married in the inverse order.—'*Pravrajyāvasitaḥ*.'—one who has fallen off from Renunciation.—(*Vivādachandra*, 21. 1–5.)

If one marries a woman of a lower caste before marrying one of a higher caste,—both these women are 'married in contravention of the sanctioned order';

if to such women, a son is born from a man of the same *gotra* as themselves who has been 'appointed' to beget a son on them,—such a *Kṣetraja* son would not be entitled to inheritance. [This explanation is totally different from all the rest.]—(*Dāyabhāga*, p. 103; also *Vīramitrodaya*, p. 712.)

'*Sagotrāt*,'—son born to a man from a wife of the same *gotra* as himself. Some people have explained the term '*Akramoḍhāsutaḥ*' as standing for the *Kṣetraja* and the *Kānīna* sons. A younger sister has been married before her elder sister, both of these girls would be *Akramoḍhā*; this is the right explanation of the term. (*Vyavahāramayūkha*, p. 164)

'*Akramoḍhāsutaḥ*'—The son born of a wife married in a form other than that which is sanctioned for the person concerned.—Those not entitled to inherit are thus summed up:—One addicted to forbidden deeds, outcast, impotent, stricken by an incurable disease, blind, deaf, mad, idiot, dumb, devoid of hands and feet, leprous, inimical to the father, consumptive, religious hypocrite, one who has taken to another life-stage.—The sons of these persons, if born before the appearance of these disabilities, and if free from these disabilities themselves, are entitled to inheritance.—(*Vibhāgasāra*, 6. 1—4.)

122. शङ्खलिखित] अपपात्रितस्य रिक्थपिंडोदकानि निवर्तन्ते ।

Inheritance, funeral cakes and water-offerings become precluded for the outcast.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 720; *Vivādaratnākara*, p. 486; *Vivādachintāmaṇi*, p. 206; *Vivādachandra*, 21. 1-2; *Vīramitrodaya*, p. 713; *Vibhāgasāra*, 5. 1-11.]

NOTES

'*Apapātritaḥ*'—is the person who, having committed a degrading sin, is excommunicated by his relatives.—'*Riktha*' is paternal property, as also the property of an agnate, for one who stands in the relation of a son to the deceased person. (*Aparārka*, p. 720.)

'*Apapātritaḥ*'—is one who has become excommunicated by his relatives on account of his having committed a heinous crime, such as injuring the king and the like.—(*Vivādaratnākara*, p. 486.)

'*Apapātritaḥ*—one who has been excommunicated by his relatives on account of his having committed something extremely wrong; he is not entitled either to inherit his father's property or to offer *Shrāddhas* or *water-offerings*.—(*Vivādachintāmaṇi*, p. 206.)

One who has been excommunicated by his relatives disgusted with his harmfulness and other defects. (*Vivādachandra*, 21. 1-2.)

'*Apapātritaḥ*'—whose water has been separated, *i.e.*, who has been excommunicated.—(*Vīramitrodaya*, p. 713, where the text is attributed to Āpastamba.)

'*Apapātritaḥ*'—one who, by reason of such heinous crimes as killing the king and the like, has been excommunicated by his relations; such a person is not entitled even to offer the funeral cake.—(*Vibhāgasāra*, 5. 1—11.)

123. कात्यायन] (A) यज्ञार्थं द्रव्यमुत्पन्नं तत्रानधिकृतास्तु ये ।
अरिक्थभाजस्ते सर्वे ग्रासाच्छादनभाजनाः ॥
(B) यज्ञार्थं विहितं वित्तं तस्मात् तद् विनियोजयेत् ।
स्थानेषु धर्मजुष्टेषु न स्त्रीमूर्खविधर्मिषु ॥

Wealth came into being for the purpose of sacrificial performance ; those who are not entitled to the performance of sacrifices, are (therefore) not entitled to inherit property ; they shall receive only food and clothing. Wealth has been ordained for sacrifices ; hence one should employ it in religious purposes, and should never give it to women, illiterate persons or irreligious persons.—(*Kātyāyana.*) [Quoted in *Mitākṣarā*, pp. 733, 746 ; *Vīramitrodaya*, p. 634 ; *Smṛtitattva* II, p. 172 ; *Aparārka*, p. 756 ; *Vivādaratnākara*, p. 514.]

NOTES

See IV, 38.

This has been quoted in support of the view that women, not being entitled to perform sacrifices, are not entitled to inherit property.—(*Mitākṣarā*, p. 733.)—All that the text means is that what has been obtained for the purpose of sacrificial performances should be employed, even by the sons and other heirs of the acquirer, in sacrificial performances.—(*Ibid.*, p 746.)

Even the son and other males are not entitled to inheritance, if they are not entitled to perform sacrifices; and this implies that women, apart from their husbands,—who are never entitled to perform sacrifices,—can have nothing to do with the property.—(B) This verse prohibits even the employment of the property for the use of women and others, and thereby forbids all the more strongly their inheriting of the whole of it. This view however is not accepted by Vijñāneshvara and others.—(*Vīramitrodaya*, p. 634.)

'*Women*'—stands here for women other than the wife, the daughter and the others who have been declared to be entitled to inheritance.—(*Smṛtitattva*, II, p. 172)

124. बोधायन] अर्हति न स्त्री दायं निरिन्द्रिया [न दायं निरिन्द्रियाणाम्] ।
अदाया हि स्त्रियो मताः ।

There is no inheritance for those women who are deficient in organs ; as women have been declared to be debarred

from inheritance —(*Baudhayana.*) [Quoted in *Aparārka*, p. 731; *Vivādachandra*, 21. 1—8.]

NOTES

'*Nirindriyā*,' means '*Nissatvā*,' devoid of strength,—says the *Prakāsha*.—'*Adāyāḥ*,' not entitled to a share in the property.—(*Vivādachandra*, 21. 1—8.)

125. शङ्ख] अकृत्वा प्रेतकार्याणि प्रेतस्य धनहारकः ।
वर्णानां यद् वधे प्रोक्तं तद् व्रतं नियतश्चरेत् ॥

If a man takes the property of the dead, without performing his after-death rites, he should carefully perform that expiatory observance which has been prescribed for the killing of the several castes.—(*Shaṅkha.*) [Quoted in *Smṛtitattva* II, p. 172.)

126. मनु 9. 214.] सर्व एव विकर्मस्था नार्हन्ति भ्रातरो धनम् ।

All such brothers as are addicted to evil deeds are unworthy of having property.—(*Manu*, 9. 214.) [Quoted in *Aparārka*, p. 720 ; *Smṛtichandrikā*, p. 631 ; *Vivādaratnākara*, p. 486 ; *Vivādachintāmaṇi*, p. 206 ; *Vivādachandra*, 21. 1. 1 ; *Vīramitrodaya*, p. 713; *Dāyabhāga*, p. 101; *Vyavahāramayūkha*, p. 164 ; *Vibhāgasāra*, 5. 1—10.]

NOTES

'*Vikarmasthāḥ*,'—doing such acts as are forbidden.—(*Medhātithi.*)

'*Vikarmasthāḥ*,'—*e.g.*, Brāhmaṇas addicted to such improper acts as cattle-tending, serving a Shūdra and so forth.—(*Sarvajñanārāyaṇa.*)

Such brothers as, though not outcasts, are addicted to such evil deeds as gambling, serving a courtesan and so forth, do not deserve to inherit property.—(*Kullūka.*)

'*Vikarmasthāḥ*,'—addicted to gambling and drinking and such acts. The meaning is that such persons get only maintenance, not shares in the property.—(*Rāghavānanda.*)

'*Vikarmasthāḥ*,'—most of whose acts are such as have been forbidden.—(*Nandana.*)

Such brothers are not entitled to shares in the property.—(*Rāmachandra.*)

'*Vikarmasthāḥ,*'—entirely addicted to such acts as are forbidden.—'*Dhanam,*'—such property as is partible.—(*Smṛtichandrikā*, p. 631.)

'*Vikarmasthāḥ,*'—addicted to gambling and such acts;—according to others, 'always engaged in causing injury to the family.'—(*Vivādaratnākara*, p. 486.)

'*Vikarmasthāḥ*'—addicted to forbidden acts.—(*Vivādachintāmaṇi*, p. 206.)

The meaning is that such persons are debarred from inheritance as are not entitled to the performance of *Shrauta* and *Smārta* rites, and are also addicted to evil deeds.—(*Vīramitrodaya*, p. 713.)

Here Manu declares that a misbehaved son is not entitled to the inheritance if there are other sons with better qualifications.—(*Vyavahāramayūkha*, p. 164.)

'*Vikarmasthāḥ,*'—addicted to evil and forbidden deeds.—(*Vibhāgasāra*, 5. 7—11.)

127. बृहस्पति] सवर्णाजोऽप्यगुणवान् नार्हः स्यात् पैतृके धने ।
तत्पिण्डदाः [*v.l.*, तत्सपिण्डाः] श्रोत्रिया ये तेषां तदभिधीयते
[*v.l.*, धनं तेषां विधीयते] ॥
उत्तमर्णाधमर्णेभ्यः पितरं त्रायते सुतः ।
अतस्तद्विपरीतेन नास्ति तेन प्रयोजनम् ॥

A son, even though born of a wife of the same caste as her husband,—if he is devoid of good qualities,—is not entitled to inherit the father's property, which goes to those Vedic scholars who provide food for that son, *i.e.*, who offer the funeral cake to the dead father. A true son delivers the father from good as well as bad debts; if a son is contrary to this, there would be no use for such a son.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, pp. 630-631; *Vivādaratnākara*, p. 487; *Vivādachintāmaṇi*, p. 206; *Dāyabhāga*, pp. 100-101; *Vīramitrodaya*, p. 713; *Smṛtitattva* II. p. 172; *Vyavahāramayūkha*, p. 164; *Vibhāgasāra*, 5. 1—9.]

NOTES

'*Aguṇavān,*'—devoid of all such qualities as would be conducive to the material and spiritual welfare of the father.—'*Uttamarṇa,*' here means *good debts*, *i.e.*, the debts due to the gods, sages and Pitṛs; and '*Adhamarṇa*' for the ordinary loan taken from a creditor.—(*Smṛtichandrikā*, p. 631.)

'*Aguṇavān,*'—not possessing the qualities indicated in the second verse.—'*Tatpiṇḍadāḥ,*' those who provide food and clothing for the disqualified (and disinherited) son.—(*Vivādaratnākara*, p. 487.)

This refers to cases where the person concerned is entirely devoid of all good qualities.—(*Vibhāgasāra*, 5. 1—10.)

'*Taṭpiṇḍadāḥ*,'—those who offer the funeral cake to the owner of the property; that is why the epithet '*Shrotriyāḥ*,' 'Vedic scholar,' has been added.—It means 'those who provided food and clothing to the disqualified sons,' according to the *Ratnākara*; even on this view the persons would be such as would offer the funeral cake to the owner of the property (the dead father).—(*Smṛtitattva* II, p. 172.)

128. कात्यायन] शास्त्रशौर्यादिरहितस्तपोदानविवर्जितः
बृहस्पति] आचारहीनः पुत्रस्तु मूत्रोच्चारसमस्तु सः ॥

If a son is devoid of learning and valour, has not performed austerities or charity, or is devoid of good conduct,—he is like the flow of urine.—(*Kātyāyana.*) [Quoted in *Smṛtitattva* II, p. 172.)

NOTES

The meaning is that such a son shall be debarred from inheritance.—(*Smṛtitattva* II, p. 172.)

129. गौतम] सवर्णापुत्रोऽप्यन्यायप्रवृत्तो न लभेतेत्येकेषाम् ।

According to some people, even the son born of a wife of the same caste as the husband shall not receive the property, if he is addicted to evil deeds.—(*Gautama.*) [Quoted in *Aparārka*, p. 720; *Vivādaratnākara*, p. 486; *Vibhāgasāra*, 5. 1—7.]

NOTES

The particle '*api*' implies—'What to say of sons born of mothers of different castes!'—such is the opinion of the *Achāryas*.—'*Na labheta*'—shall not receive a share in the property.—(*Vivādaratnākara*, p. 456.)

'*Anyāyapravṛttaḥ*'—one who transgresses the injunctions.—(*Vibhāgasāra*, 5. 1—9.)

130. आपस्तम्ब] यस्त्वधर्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तमभागं कुर्यात् ।

If any one makes wrong use of wealth, he shall be deprived of his share in the inheritance, even though he be the

eldest.—(*Āpastamba.*) [Quoted in *Aparārka*, p. 721 ; *Vivādachandra*, 21.1. 1 ; *Vivādaratnākara*, p. 486 ; *Dāyabhāga*, p. 100 ; *Smṛtitattva* II, p. 172 ; *Vibhāgasāra*, 5. 1—7.]

NOTES

The man who spends money in the wrong way is to be debarred from inheritance.—(*Vivādachandra*, 21. 1. 1.)

'*Adharmeṇa*'—in gambling and the like.—'*Dravyāṇi*,'—gold, cattle, clothes and so forth.—'*Pratipādayati*,'—wastes, or removes.—(*Aparārka*, p. 720.)

'*Pratipādayati*'—spends.—'*Adharmeṇa*'—in gambling and the like.—The 'wrong use' stands for such expenditure as is not compatible with the life-stage in which the man happens to be.—'*Abhāgam*,' *i.e.*, his share shall be reduced to the extent of what he has wasted ; according to some people, the meaning is that he shall be entirely deprived of his share.—(*Vivādaratnākara*, p. 486.)

Some stupid person has corrupted the reading of this text to mean 'If the eldest brother makes a right use of the wealth, he should be given a share equal to the father's.' But there is no authority for such a reading.—(*Dāyabhāga*, p. 100.)

'*Eldest*,'—*i.e.*, the eldest son. —(*Smṛtitattva* II, p. 172.)

The 'eldest'—who incurs improper expenditure.—(*Vibhāgasāra*, 5. 1—8.)

131. नारद] दीर्घतीव्रामयग्रस्ता ये जडोन्मत्तपङ्गवः ।
भर्तव्याः स्युः कुलस्यैते तत्पुत्रास्त्वंशभागिनः ॥

Those afflicted with chronic and acute diseases,—also the idiot, the insane and the lame—are to be maintained by the family ; but their sons are entitled to a share in the property.—(*Nārada*, 13. 22.) [Quoted in *Vivādachandra*, 21. 1—4 ; *Vyavahāramayūkha*, p. 163.]

NOTES

'*Chronic diseases*'—such as consumption.—'*Acute diseases*'—such as leprosy.—(*Vivādachandra*, 21. 1—4.)

CHAPTER II

Section 1

EQUAL RIGHTS OF FATHER AND SON OVER ANCESTRAL PROPERTY

1. याज्ञवल्क्य 2. 122.] भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा ।
तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः
[*v.l.*, चैव हि] ॥

The land that may have been possessed by the grandfather, as also the royalties [or buried treasures] and wealth—over all this, the ownership of both the son and the father is equal [*and the partition is to proceed on this basis, not according to the father's will*—this has to be added for completing the sentence, according to the *Mitākṣarā* which reads *chaiva hi*, and thereby takes the second line as a subordinate clause, thereby making it necessary to supply the principal sentence].—(*Yājñavalkya*, 2. 122.) [Quoted in *Smṛtichandrikā*, p. 649; *Vivādaratnākara*, p. 461; *Madanapārijāta*, p. 660; *Parāsharamādhava*, p. 338; *Dāyabhāga*, p. 29; *Vīramitrodaya*, pp. 567—575; *Smṛtitattva* II, p. 166; *Vyavahāramayūkha*, pp. 89, 98; *Dāyanirṇaya*, 18. 1. 1.]

NOTES

'Land that was acquired by the grandfather' or '*nibandha*,' *i.e.*, inexhaustible treasure, or '*dravya*,' other kinds of wealth,—over both these the ownership of the father and son should be understood to be equal, without any doubt whatsoever.—The term '*ubhayoḥ*' is meant to express the idea that the ownership is there only while one is not separated.—The land and other wealth are specified, because these are impartible, or because they are immoveable.—The objection that has been urged as to the impossibility of the performance of religious duties by the father with the help of the ancestral property which would not be entirely his own,—has no force; as the said performance would be possible with the help of the man's self-acquired property.—(*Vishvarūpa.*)

Over the grandfather's property the rights of the grandson are equal to those of his father; hence even though unwilling, the father must divide the property with his son, if the son so wishes it. This division too must be equal; the father cannot make it unequal, like what he can do in regard to his self-acquired property.—'*Nibandha*,' assignment, allotment, royalty,—such as 'for each field and for each house, so much money shall be given to such and such a person.'—Even though the Smṛtis declare the rights of the father and son over ancestral property to be equal, yet this does not involve any incompatibility with the injunctions of the performance of such rites as *the installing of the fire*. For this reason, there can be no justification for taking these Smṛti texts in a somewhat indirect sense, meaning that "The father shall not give away or enjoy the whole of the ancestral property, he shall always leave something for the son." It will not be right to have recourse to this explanation; because the rights of the father over the ancestral property do not disappear, on the birth of the son, wherefore it would be wrong for him to perform his religious duties with the help of that property. It is true that the property is common, between the father and the son, yet, either with the son's consent, or after separating the son's share, or with the help of the property that he may acquire on his own behalf, the father could perform the *Agnihotra* and other acts. Nor would it be right to argue that "after the son's birth the father would have no rights over the ancestral property, until a partition were made."—This would be so only if rights of ownership were created by partition; which is not so. All that is done by partition is the assignment of the individual ownership of the owners of the joint property over specified portions that property; it does not create an ownership that did not exist before. As regards the mention by Gautama of partition as one of the sources of ownership, all that is meant is that it allots or assigns what is already there.—(*Aparārka*.)

This text is meant to meet the view that the partition of the ancestral property also is determined by the will of the father, in the same manner and to the same extent as that of the father's self-acquired property.—'*Bhūḥ*,' grains and fields.—'*Nibhanda*,' measures, such as 'so many betel-leaves make one betel-load,' or 'so many betel-nuts go to make one nut-load' and so forth.—'*Dravya*,' gold, silver and the like, which may have been acquired by the grandfather, through gifts or victory and other means.—Over all this the ownership of both father and son is well known; and it is on this basis that its partition shall proceed.—'*Hi*' [*v. l.*, '*Chaiva hi*' for '*chobhayoḥ*'] *because*,—the ownership of both is '*Sadṛsham*,' equal,—therefore the partition cannot depend entirely upon the will of the father, nor can the father receive a double share. For this reason, what has been said in a previous text [*Yājña.*, 2. 120] regarding the apportionment of the shares of the grandsons in accordance with the shares of their fathers has to be taken in its literal sense [*i.e.*, as referring to cases where the father has died; while the present text refers to cases where the father is alive].—Then again the other text—'If the father makes a partition, he shall divide the sons as he wishes, etc.' (*Yājña.*, 2. 114),—refers to the father's self-acquired property.—Similarly, what has been said (by Nārada) regarding the father taking a double share when making the partition, that also refers to the father's self-acquired property.—So also in the text declaring that 'so long as the parents are living, the son, even

though advanced in age, is not independent,'—the 'non-independence' spoken of pertains to the self-acquired property of the parents;—so also in the text that "the sons have no rights while the parents are living."—Thus then as regards the grandfather's (*i.e.*, ancestral) property, it may be partitioned at the desire of the son,—even while the mother is still of the child-bearing age and the father also is not free from desire (for sons), and the latter does not want the partition. For this same reason if a father, not divided from the son, should make a gift of, or sell, the grandfather's property, the son would be entitled to object to it. He would not be entitled to object, if the property concerned were self-acquired by the father; as, in regard to that property, he is dependent upon the father. But even with regard to this, the son should give his consent.—Thus then even though over both his father's property as well as his grandfather's property, the son's ownership comes into existence with his birth,—yet, in regard to the father's property, the son is dependent upon the father; the father being the predominant factor by reason of his having acquired it; consequently, when the father is going to make any use of that self-acquired property, it behoves the son to give his consent to it. As regards the grandfather's property, however, the ownership of both the son and the father stands on the same footing; and hence the son should be entitled to object to any use that the father may be making of it.—This is the difference between the two.—Manu also says the same thing under 9. 209—'*Paitṛkantu pitā dravyam, etc.*,' which implies that even though unwilling, the father shall divide the ancestral property if the son wishes it.—(*Mitākṣarā.*)

Land, gold and other kinds of wealth, and '*nibandha*,'—royalties assigned by the king, out of the ferry-tolls and other taxes,—which may have been acquired by the grandfather,—over all this, the ownership of both the father and the son would be similar; the particle '*eva*' goes with '*sadṛsham*' [the meaning being the ownership of both *must* be similar].—The particle '*cha*' implies that the same holds good also with regard to the ownership of the great-grandson over the property of the great-grandfather.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

'*Nibandha*' is the share of merchandise that is received by cooks and others by way of tax. '*Sadṛsham svāmyam syāt*,'—this is only a periphrastic way of asserting that they receive equal shares in the property; otherwise this verse would be a mere repetition of what has been said in the preceding verses; and this would not be proper. Hence the meaning of the present verse should be taken to be that "if the father is dividing the ancestral property during his lifetime, it shall never be done unequally"; as regards the dividing of his self-acquired property, that may be done unequally, at any time.—Some people take the present text in its literal sense, that—"(*a*) The grandfather's property may be partitioned even at the wish of the grandson,—(*b*) that the giving away or selling, etc., of the ancestral property cannot be done at the will of the father, because the grandson's ownership over it has been declared."—This view may be accepted; as there is nothing incompatible in this,—and this is what has been declared by Viṣṇu also: 'In the grandfather's property, the ownership of the father and son is equal.'—The implication of all this is that in the father's property, the ownership of the father and son is *unequal*. What is meant by this 'equality' and 'unequality' is that 'in

regard to the grandfather's property, the ownership of the father as well as the son is equally independent; while in regard to the father's property, while the father is alive and free from defects, only his ownership is independent (not the son's).'—(*Smṛtichandrikā*, pp. 649-650.)

'*Nibandha*' is that which is assigned, *e.g.*, royalties in mines and other things.—'*Sadṛsham svāmyam,*' *i.e.*—(*a*) there is no double share, (*b*) nor does the partition depend on the will of the father.—(*Vivādaratnākara*, p. 461.)

'*Bhūḥ,*' grains, fields and so forth.—'*Nibandha*' is what is *fixed*, *i.e.*, such fixed estimates as—'In one betel-garden, there are so many leaves,' 'in one nut-garden, there are so many nuts'; in this manner do experts make allotments.—'*Dravyam,*' gold and silver earned through gifts, victory, business, agriculture and such means.—In all such property that belonged to the grandfather, the rights of the father and the son are 'equal.' Hence, such property is not subject to such rules as—(*a*) 'while the father is living, there can be partition only if he wishes it,' or (*b*) 'the father is to receive a double share,' or 'shares are allotted in accordance with the status of the father.'—The following objection might be urged here:—"Under Yājñavalkya, 2. 120 it has been declared that 'when the coparceners are the sons of several fathers (*i e.*, they are first cousins), the shares assigned to them shall be in accordance with the share that would have fallen to their respective fathers'; which means that the grandfather's property shall be divided not as it stands (*i.e.*, equally among all coparceners), but in accordance with the shares of the fathers; while in the present verse—'*Bhūryā pitāmahopattā, etc.*,—it is asserted that in the grandfather's property, the rights of the father and son are equal;—thus there is a clear inconsistency between these two assertions."—Not so, we reply Yājñavalkya, 2. 120 refers to the case of grandsons partitioning their grandfather's property after their fathers' death; this is made clear by the assertion that 'the assignment of their shares shall be in accordance with the share that would have fallen to their respective fathers'; as this clearly points to the connection of the grandsons with their grandfather's property, through their (dead) father.—This would not be possible so long as the father were alive; because his ownership would have come with his birth; while on the death of the father, his ownership would naturally cease with his death, whereupon it is only natural that the ownership should devolve upon the grandsons (the dead man's sons); thus it is that Yājñavalkya, 2. 120—'*Anekapitṛkāṇām, etc.*' restricts the method of partition of the grandfather's property by the grandsons.—The second text—'*Bhūryā, etc.*' (the present verse) refers to the case of the grandfather's property in relation to the grandson, while the father and the grandfather are both *alive*. This is made clear by the clause '*Pituḥ putrasya chaiva hi*'; as it is impossible for a dead person to have any ownership,—if either of the two were dead, it would not be possible to speak of 'the ownership of the father and son being similar.'—In a case where there are three brothers, one of whom has one, the other has two, and the third has three sons,—and all these grandsons are alive,—the aforesaid rule will apply (*i.e.*, the shares being determined in accordance with the share of their respective fathers ('*Pitṛto bhāgakalpanā.*') When however A had one son B, who has sons and grandsons living,—and another son C who has only grandsons, and no sons living,—then those grandsons whose father is

alive shall inherit their grandfather's property, in accordance with the rule embodied in the present text, '*Bhūryā pitāmahopattā*, etc.'—In a case where a man has lost all his sons,-- and only his grandsons are alive,—then the grandsons shall receive their shares beforehand (?), in accordance with the shares of their fathers,—and not in accordance with the rule '*Bhūryā pitāmahopattā*, etc.,' since their fathers being dead, this latter rule is not applicable to the case.—The order of inheritance here prescribed is for cases where the grandfather is dead; where the grandfather is living, the partition is done by his wish, not by the grandsons' wish; where the father is living, the partition shall be done, in some cases by the wish of the father, and in others by that of the son.—(*Madanapārijāta*, pp. 660—662.)

'*Bhūḥ*,' paddy-field, etc.—'*Nibandhaḥ*,' such as—'one betel-load consists of so many leaves,' 'one nut-load consists of so many nuts,' and so forth.—'*Dravyam*,' gold, silver, etc., obtained by the grandfather, through gifts, victory and other means.—(A) Over all this, the ownership of the father and the son is universally recognised; *hence there is partition among these.*—(B) '*Hi*,' because,—their '*ownership*' is '*similar*,' equal,—*consequently the partition is not to depend on the wish of the father, nor is the father to have a double share.* For this reason, even though the ownership is equal, yet in cases covered by the rule that 'where the coparceners are the sons of several fathers, their shares shall be determined in accordance with the shares of their respective fathers,' this rule has to be applied, because it is directly so prescribed. It is for the same reason that such a rule as—'The father, when partitioning, shall take two shares for himself,'- has been taken to pertain to other time-cycles, or to refer to self-acquired property. In regard to the grandfather's property, however, there can be no unequal partition. From this it follows that in a case where the father and son have not been separated,—if the father gives away or sells the grandfather's property,—the son will be entitled to object to it.—(*Parāsharamādhava*, pp. 338-339.)

The real meaning of this text is as follows:—There are two brothers, A and B,—whose father C is alive, and they have not received their shares;—one of them, A, gets a son D and then dies,—the other B, is living;—after some time, their father C dies; now, the notion might arise that the property left by C shall all go to his surviving son, B, who is his nearest relative, and not to the grandson, whose father has died.—It is with a view to preclude this possible notion that the text says *the ownership is 'similar'*; the meaning being that '*just as the father (A or B) has a right over the property of the grandfather* (C) *so also have the sons of A or B, over that property, after the death of these latter*'; and there is no distinction between these two rights on account of the remoteness or proximity of their relationship (to the deceased (C); specially as both (the son as well as the grandson) would be equally helping him (C) by offering to him the Funeral Ball at the *Pārvaṇashrāddha*.—For this same reason of offering the Funeral Ball, the great grandson also, on the death of his father and grandfather, becomes entitled to the property of his great-grandfather, equally with the living son and grandson of this latter.—If the sons had the right over their grandfather's property even during the lifetime of their father, then when there would be partition between two brothers,—one of whom has sons while the other has no son,—these sons should have to receive

separate shares; because their rights over the property would *ex-hypothesi* be equal to those of their father or uncle. The text therefore has to be taken as referring, not to grandsons in general but, to such grandsons as have lost their father.—'*Nibandhaḥ,*' such allotments as 'I shall pay such and such a sum on the Full Moon day of the month of *Kārtika.*'—'*Dravyam,*' stands for *bipeds*, as it is mentioned along with 'land.'—The meaning of the text as propounded by *Dhāreshvara* however is as follows:—'In regard to the grandfather's property, if the father wishes, to give it away or partition it, according to his own will (he has to bear in mind) that over that property, the rights of his son are equal to his own; so that he is not free to partition it otherwise than equally,—as he is in regard to the division of his own self-acquired property.'—In reality however in this text (as explained by ourselves), there is nothing that would be incompatible with the view that in the property of the grandfather, the father shall receive a double share and it shall be partitioned at the wish of the father, not at the wish of the son.—(*Dāyabhāga*, pp. 29—32.)

In accordance with this text, since the rights of the father and son over the grandfather's property are equal, it is only right that that property should be partitioned at the wish of the son also.—(*Vīramitrodaya*, p. 554.)—The 'double share' for the father is meant only in regard to the father's self-acquired property; as regards the ancestral property, Yājñavalkya has declared the ownership of the father and the son to be equal; so that both of them shall share that property equally. The meaning of the text is as follows:—'*Bhūḥ,*' paddy-fields and the like;—'*Nibandhaḥ*' is what has been assigned to a person as a living in the shape of such edicts as 'such and such a person shall receive so many leaves or so many nuts out of each leaf-load or nut-load';—'*dravyam,*' gold, silver and the like;—over all this the equality of the rights of the father and the son '*is well known,*'—this is the signification of the particle '*hi.*' The reason for this lies in the fact that the son's rights were born along with his own birth. The meaning of this 'equality' of the rights is that in regard to this property the sons are not dependent upon the father; so that this property cannot be divided unless the sons also are willing, and in this property, the father is not to receive a double share.—[There follows a long quotation setting forth the views propounded in Jimūtavāhana's *Dāyabhāga*; which views are controverted as follows.]—This view should not be accepted, as it is inconsistent with the context. After having declared that 'among coparceners born of several fathers, the shares shall be determined in accordance with the shares of their respective fathers,'—Yājñavalkya has added the present verse '*Bhūryā*, etc.';—now there arise three questions:—(*a*) Does it mean that during his father's lifetime, the son has no rights over the grandfather's property?—or (*b*) that there shall be no division of the property?—or (*c*) that there shall be division of it only at the will of the father, just as in the case of the father's self-acquired property? [After a long discussion] the conclusion deducible from all this is as follows:—Though over the father's property, as well as over the grandfather's property, the rights of the sons and grandsons come into existence with their birth, yet, so far as the father's property is concerned, the sons are dependent upon the father whose predominance is due to his being the acquirer of the property; hence if the father is going to make use

of this property, the sons must give their consent to it; – but in regard to the grandfather's property, they are entitled to object to any use that the father may be going to make of it.—(*Vīramitrodaya*, pp. 567–575.)

'*Nibandha*' is the fixed royalty granted to a person out of the produce of mines and such sources—as explained by the *Kalpataru*.—'*Dravya*' stands for *bipeds*. Over these properties acquired by the grandfather, – just as the father has a right over it by reason of his offering the Funeral Ball to him as his father, so also, after the death of the father, and the consequent disappearance of his right, the sons come to have a right over that part of the property which would have been their father's; and this right of the grandsons will be there even though their uncle (their father's brother) may be living. – But so long as the father is alive, the sons not being entitled to offer the Ball to their grandfather, have no right over the grandfather's property.—Similarly on the death of the grandson of the acquirer, his great-grandsons become entitled to the property; but so long as the grandson is alive, the great-grandson has no right over it. Or the present text may be taken to mean that 'the father has no power to make an unequal division of the grandfather's property, as he has in regard to his own property,' and it cannot mean that 'the son and the father have equal rights over it'; because, according to Nārada, the father would be entitled to a double share.—There is no reason for taking this 'double share' as pertaining to the father's self-acquired property.—(*Smṛtitattva* II, pp. 166-167.)

People acquire their rights over their father's property by their very birth. This text cannot be taken to mean that what creates the son's right over the grandfather's property is the grandfather's death, and not the birth of the son himself. Because if that were the meaning then the grandson who has not been born till the time of the grandfather's death would have no right over his property. In reality, no significance attaches to the term 'grandfather' here [as all *ancestors* are meant]. Or, if the text referred to the property of the grandfather only then the great-grandson would not have "equal rights" over the property of his great-grandfather.—(*Vyavahāramayūkha*, pp. 89-90.)

What the text means is that if the grandfather has died, leaving a son and a grandson, both these latter are to receive equal shares in the grandfather's property. Or it may be taken to mean that in the matter of his father's property, the father is not free to make an unequal division among his several sons, – as he is in the disposal of his own self-acquired property It is not meant that the share of the son is to be equal to that of the father; as this would be contrary to Nārada's text 13. 12 (see Sec. II, 33).—(*Dayānirṇaya*, 17. 2.)

2. विष्णु 17.1.2.] पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे ।
पैतामहे तु पिता पुत्रयोस्तुल्यं स्वामित्वम् ॥

If the father divide his sons, he may do what he likes in regard to his self-acquired property; over the grandfather's property, however, the ownership of the father and

son is equal.—(*Viṣṇu*, 17. 1-2.) [Quoted in *Smṛtitattva* II, p. 166; *Dāyabhāga*, p. 31; *Vīramitrodaya*, p. 569; *Dāyanirṇaya*, 15. 2—9.]

NOTES

The meaning is that if the father is making a partition among his sons,—then out of his self-acquired property, he is free to make an unequal division and give what he likes to his sons; not so in regard to the grandfather's property, over which the ownership of both father and son is equal, and the father is not free to do what he likes. We must reject the two views—(*a*) that 'the grandfather's property is to be divided equally between father and son,' and (*b*) that 'the sons are free to make a division of that property.'—(*Dāyabhāga*, p. 31.)

In the case of the self-acquired property of the father himself, the partition depends entirely upon his wish. (*Dāyanirṇaya*, 17. 2.)

3. बृहस्पति 25. 2.] क्रमायाते गृहक्षेत्रे पितृपुत्राः [*v.l.*, पुत्रपौत्राः]
व्यास समांशिनः ।
पैतृके न विभागार्हाः सुताः पितुरनिच्छतः ॥

In the ancestral house and land, the father and sons [*v.l.*, sons and grandsons] have equal shares. In the father's property, the sons are not entitled to a share, if the father is unwilling (to give).—(*Vyāsa*, *Bṛhaspati*, 25. 2.) [Quoted in *Smṛtichandrikā*, p. 649; *Aparārka*, p. 728; *Vivādaratnākara*, p. 461; *Vyavahāramayūkha*, p. 95.]

NOTES

The meaning is that, as regards the property of the grandfather, and other ancestors, the sons may claim partition even when the father is unwilling.—(*Vyavahāramayūkha*, p. 95.)

4. बृहस्पति] द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा ।
सममंशित्वमाख्यातं पितुः पुत्रस्य चोभयोः [*v. l.*, चैव हि] ॥

Over the property acquired by the grandfather, movable as well as immovable,—the rights of both father and son have been declared to be equal.—(*Bṛhaspati*.) [Quoted in *Smṛtichandrikā*, p. 649; *Aparārka*, p. 725; *Vivādaratnākara*, p. 461; *Vivādachandra*, 19.1—9; *Parāsharamādhava*, p. 338; *Dāyabhāga*, p. 46; *Vīramitrodaya*, pp. 568, 569; *Vyavahāramayūkha*, p. 98; *Vibhāgasāra*, 3. 1—10.]

NOTES

The meaning is that the grandson is entitled to a share in the grandfather's property, – even during the lifetime of his father. – (*Vivādachandra*, 19. 1–9.)

This provides the reason for the view that a person whose father is living may divide with his father the property of his grandfather. – (*Parāsharamādhava*, p. 338.)

What this means is that the father is not free to deal with the grandfather's property in the manner in which he can deal with his own self-acquired property, in making an unequal division of it ; it does not mean that the father and son have equal shares in the property. – (*Dāyabhāga*, p. 46.)

Out of the grandfather's property, the father receives only a single share, and not a double one, as he can in his self-acquired property ; nor can he make an unequal division of it ; – so says the *Madanaratnākara*. - (*Vîramitrodaya*, p. 568.)

In the grandfather's property, the father has the same share as his son, – even though he may have only one son. - (*Vyavahāramayūkha*, p. 98.)

This should not be taken as laying down equal shares for the father and son ; all that '*Samam*' means is that 'the son has as much a share in the property as the father,' and it does not mean that their *shares* are equal. If it meant the latter, then there would be a conflict with the text of Nārada – '*Dvāvanshau pratipadyēta, etc.*' – and also that of Shankha-Likhita – '*Yadyēkaputraḥ syāt, etc.*' – (*Vibhāgasāra*, 3. 1–10 to 3. 2. 2.)

5. कात्यायन] पैतामहं समानं स्यात् पितुः पुत्रस्य चोभयोः ।

The grandfather's property shall belong equally to the father and son. – (*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 648 ; *Aparārka*, p. 728.

NOTES

This text supplies the reason why a man whose father is living can divide, with that father, the grandfather's property. – (*Smṛtichandrikā*, p. 648.)

6. व्यास] स्थावरस्य समस्तस्य गोत्रसाधारणस्य च ।
नैकः कुर्यात् क्रयं दानं परस्परमतं विना ॥
विभक्ता अविभक्ता वा दायादाः [*v. l.*, सपिण्डाः] स्थावरे समाः ।
एको ह्यनीशः सर्वस्य दानाधमनविक्रये ॥

No single coparcener shall, without the consent of the others, sell or give away any entire immovable property which belongs to the whole family. – Divided or undivided, all coparceners are equal, in regard to immovable property ; and

no one has the right to give, mortgage or sell the whole of it —(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 716 ; *Vivādachintāmaṇi*, p. 251 ; *Dāyabhāga*, p. 34 ; *Smṛtitattva* II, pp. 164, 176 ; *Vīramitrodaya*, pp. 549, 585, 586 ; *Dāyanirṇaya*, 15. 2–5.]

NOTES

'*Ādhamana*' is mortgaging.—The second verse refers to cases where the coparceners have found it difficult to make an equal division of the immovable property and have therefore agreed to divide its produce year after year and have divided only the other kinds of property.—(*Smṛtichandrikā*, p. 716.)

The meaning of the second verse is that 'one should obtain the consent of the divided coparceners also to these transactions, in order to guard against any dispute that might arise as to whether or not the coparceners had been divided before the transactions took place.—(*Vivādachintāmaṇi*, p. 252.)

These two texts of Vyāsa should not be taken to mean that any individual coparcener has no right to sell or mortgage or give away the property mentioned. Because the 'ownership'—which consists in being entitled to make any use one pleases—of the coparceners is there in the case of the properties mentioned, exactly as in the case of other kinds of property. What Vyāsa's words mean is that 'if a coparcener, on the strength of his ownership, were to sell or mortgage or give away tbe property to a wicked person, he would injure the whole family and thereby incur sin'; they do not mean that the transactions themselves would be invalid.—(*Dāyabhāga*, p. 34.)

The presence of the qualification '*Samastasya*,' 'entire,' implies that the case contemplated here is one in which the ownership of each coparcener extends over the entire property ; so that, in regard to the whole of this property every coparcener has the notion 'this is mine as well as his' ; it is for this reason that the giving, selling or mortgaging of it without the consent of all the coparceners, has been forbidden,—when it is done for the individual's own benefit. It follows therefore that this prohibition does not refer to cases where individual coparceners own only portions of the property.—(*Smṛtitattva* II, p. 164.)—In cases where the coparceners have been separated, but their shares in the property have not been definitely allotted, the property remains *joint* ; and when the property is joint, it follows as a matter of course that no single coparcener has the right to sell or mortgage or give it away. Where the property has been definitely divided and partitioned, the said transactions would be perfectly valid in regard to the shares allotted to each coparcener. In reality, however, even in the case of divided coparceners, the obtaining of their consent would serve the purpose of any disputes that might arise in regard to their having been joint or separate ; this, in the case of separated coparceners, serving the same purpose as the consent of kinsmen, neighbours and co-villagers.—(*Smṛtitattva* II, p. 175.)

[The words of *Smṛtitattva*, p. 176 are reproduced.]—This same appears to be the opinion of the author of the *Mitākṣarā* also, who has defined '*vibhāga*,' 'partition,' as the allocation of the ownership of an individual coparcener over one part of the property, which consists of several parts over which the ownership of several persons extends.'—The question for consideration in

this connection is :—Does the ownership of the owners over a number of articles constituting 'property' extend over each individual article severally or over all of them collectively ? We hold that it extends over the articles severally.—(*Vīramitrodaya*, pp. 549-550).—Though it is well-known that no single coparcener has the right, without the consent of others, to sell or mortgage or give away any part of the joint property of any kind, yet it is reiterated here with special reference to immovable property, with a view to indicate its special importance. In the case of undivided coparceners, it is just possible that after the lapse of some time, doubts may arise as to their being separated or joint before the disputed transaction ; and for the settling of this point, partition would have to be proved by witnesses and other means ; as otherwise any gift or other transaction out of the property, if *joint*, would be impossible (invalid). If, therefore, the consent of the coparceners has been obtained, the transaction becomes validated, without recourse to witnesses and other evidence. [As in the presence of such consent, the validity of the transaction would not be affected by the coparceners having been separated or joint.]—(*Vīramitrodaya*, p. 585.)

This text prohibits selling and such transactions by non-separated members of a joint family. The exception to this is found in V, 24. (*Dāyanirṇaya*, 15. 2—5.)

7. कात्यायन] सकलं द्रव्यजातं यद् भागैर्गृह्णन्ति तत्समैः ।
पितरो भ्रातरश्चैव विभागो धर्म्य उच्यते ॥

That partition is called *Righteous* whereby fathers and sons receive the entire property in equal shares.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, pp. 608, 613; *Vīramitrodaya*, p. 571 ; *Vyavahāramayūkha*, p. 98.]

NOTES

When the father and others receive in equal shares all the property that is joint,—such partition, being in accordance with the scriptures, is said to be 'righteous.'—(*Smṛtichandrikā*, p. 608.)—Kātyāyana has here declared 'equal division' to be the universal law.—(*Ibid.*, p. 613.)

From texts like the present one it is clear that among all kinds of coparceners—among brothers, as also among the father and his sons—the division should be in equal shares.—(*Vīramitrodaya*, p. 571.)

8. कात्यायन] पैतामहं च पित्र्यं च यच्चान्यत् स्वयमर्जितम् ।
दायादानां विभागे तु सर्वमेव विभज्यते ॥

Grandfather's property, father's property, self-acquired property,—all this is divided at the partition among coparceners.—(*Kātyāyana.*) [Quoted in *Parāsharamādhava*, p. 375.]

NOTES

Of the 'self-acquired' property, only that has to be divided which may have been acquired with the help of the paternal property,--what has not been so acquired being impartible.—Of all these three kinds of property what should be divided would be the balance that remains after the debts have been paid off.—(*Parāsharamādhava*, p. 375,)

9. याज्ञवल्क्य 2. 120.] सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः ।

In the case of property arising out of the joint property,—the division shall be equal.—(*Yājñavalkya*, 2. 120.) [Quoted in *Vīramitrodaya*, p. 562 ; *Vivādaratnākara*, p. 481 ; *Vivādachintāmaṇi*, p. 202.]

NOTES

See Chapter I, Sec., 51.

'*Arthasamutthāna*,' acquiring of property.—When a property is acquired by all the coparceners with each other's help, it should be divided equally. Of such property, the division shall be equal, even when done by the father.—(*Aparārka*.)

This is an exception to the law relating to the 'gains of learning' and such other properties out of which the acquirer receives a double share. If the common property of undivided brothers is augmented, through trade, agriculture and other means, by any one of the coparceners,—the division shall be equal ; and the acquirer shall not receive a double share. —(*Mitākṣarā*.)

'*Sāmānyārthasamutthāne*,'—this qualifies '*dravye*' (understood), the meaning being—"in the case of such '*dravya*,' property, as had its rise (*samutthāna*) from the joint property,"—*i.e.*, what has been derived from the common property,—the division *shall* be equal ; even though some individual coparcener may have put forth much bodily and other kinds of effort in the obtaining of the property. But this is so only in the case of brothers.—(*Vishvarūpa*.)

In a case where all the brothers have conjointly worked towards the acquiring of property,—such work being in the form of agriculture, trade and the like, the division shall be equal. The particle '*tu*' serves to differentiate the present from that case where the additional property has been acquired without the help of the ancestral (joint) property.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

This is an exception to what has been declared by Vashiṣṭha to the effect that the coparcener who has acquired a property by his own effort shall take two shares of it. The meaning is that in a case where the accretion to the joint property has been brought about by agricultural and other operations, the division shall be equal, and the acquirer shall *not* receive two shares. The text of Vashiṣṭha has to be explained as pertaining to cases other than those referred to here.—(*Vivādaratnākara*, p. 481.)

In a case where a coparcener makes an addition to the joint property by means of agriculture, trade and such other means, he is not to receive a higher share.—This however should be taken to apply to cases where the other coparceners also have made additions ; otherwise this would be inconsistent with Vashiṣṭha's text—'*yēna tēṣām svayamarjitam, etc.*'—(*Vivādachintāmaṇi*, p. 202.)

10. प्रकाश] स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम् ।
असम्भूय सुतान् सर्वान् न दानं न च विक्रयः ॥

In the case of immovable property, and in that of property in the shape of bipeds (slaves),—even though self-acquired,—there shall be no giving or selling without the consent of all the sons.—(*Prakāsha.*) [Quoted in *Mitākṣarā*, p. 611 ; *Vivādachintāmaṇi*, p. 251 ; *Parāsharamādhava*, p. 332 ; *Dāyabhāga*, p. 35 ; *Vīramitrodaya*, pp. 531-532 ; *Smṛtitattva* II, pp. 167, 177 ; *Vyavahāramayūkha*, p. 91 ; *Vibhāgasāra*, 18. 2—6 ; *Dāyanirṇaya*, 18. 2. 1 where it is attributed to Yājñavalkya.]

NOTES

In regard to immovable property—ancestral as well as self-acquired—one is subservient to the son and others [and his ownership is not entirely independent.]—(*Mitākṣarā*, p. 611, also *Vīramitrodaya*, p. 532.)

In regard to immovable property—even though self-acquired—one has to be subservient to the son and others.—(*Parāsharamādhava*, p. 332.)

The word '*kartavyaḥ*' has to be supplied ; what is forbidden is the *doing* of the 'selling' and 'giving' ; so that if one were to do this selling or giving, he would incur the odium of having transgressed the injunction ; and it would not mean that the sale or gift is invalid ; because even hundreds of assertions could not alter a settled fact.—(*Dāyabhāga*, p. 35.)

This forbids the *selling* and *giving away* of the property, not its enjoyment.—(*Vyavahāramayūkha*, p. 91.)

This text refers either to the property of reunited coparceners or to joint property in general,—as it is only in regard to these that the father is not free to do what he chooses.—Against this the following objection may be raised—according to Yājñavalkya's text—'*Bhūryā pitāmahopāttā, etc.*' (sec. 1)—the son is as much entitled to a share in the grandfather's property as the father ; hence, in accordance with the text '*Sāmānyam putradarādhi, etc.*,' the grandfather's property being '*sāmānya*,' 'common,' between the father and the son, that property is one that cannot be given away by the father ; so that even though the father were free to do what he chose regarding that property, he would yet be not free to give it away, in view of the text just quoted ('*sāmānyam, etc.*').—This objection is based upon a misconception ; the text '*sāmānyam, etc.*' is not meant to bear upon the 'common' (ancestral) property ; it refers in fact to that property which has been *acquired jointly*.—(*Vibhāgasāra*, 18, 2—11, *et. seq.*) In reality, however, when a man

is free to do what he likes with the property, he is certainly entitled to sell or give it away; and all that the prohibition contained in this text means is that the selling or giving away of immovable property is not to be commended.—(*Vibhāgasāra*, 19. 1—10.)

What is meant is that in a case where the ancestral property had been lost and is recovered by the father by drawing upon the said property,—the father cannot dispose of the property without the consent of his sons. The term '*svayārjitam*' ('self-acquired') stands for '*recovered* by himself'—(*Dāyanirṇaya*, 18. 2. 1.)

11. प्रकाश] एकोऽपि स्थावरे कुर्यात् दानाधमनविक्रयम् ।
आपत्काले कुटुम्बार्थे धर्मार्थे तु विशेषतः ॥

Even a single coparcener can give away or mortgage or sell immovable property, in times of distress, for the sake of the family; specially for religious purposes.—(*Prakāsha.*) [Quoted in *Mitākṣarā*, p. 611; *Vivādachintāmaṇi*, p. 251; *Smṛtitattva* II, p. 177; *Vibhāgasārā* 18. 2—8.]

NOTES

While the sons or grandsons or brothers—forming members of a joint family—are minors, and as such not in a position to accord their consent to any transactions,—if some calamity happens to overtake the entire family, or if it becomes necessary for the purpose of supporting the family, or for the purpose of performing certain compulsory *shrāddhas* and other rites,—even a single coparcener,—who is qualified to do it,—can give away or mortgage or sell an immovable property.—(*Mitākṣarā*, p. 611.)

Even though a coparcener may have separated, yet if (during his absence or death) a calamity should befall all the familes,—or if it be found necessary to marry a daughter of that coparcener,—another coparcener (though separated) may give away or sell even the immovable property of that coparcener. This is an exception to what has been said in the text—'*Sthāvaram dvipadañchaiva, etc.*,' (see above).—(*Vivādachintāmaṇi*, p. 251.)

This is an exception to the foregoing text.—(*Smṛtitattva* II, p. 177.)

Even though the man has been separated from his coparceners,—and the property is an immovable one,—if there is a calamity common to all coparceners, or a daughter of one of the coparceners has to be married, then for meeting these cases, even the separated coparcener could give away or sell the immovable property.—(*Vibhāgasāra*, 18. 2-8.)

12. बृहस्पति] येनांशो यादृशो भुक्तस्तस्य तन्न विचालयेत् ।
स्वेच्छाकृतविभागो यः पुनरेव विसंवदेत् ।
स राज्ञांऽशे स्वके स्थाप्यः शासनीयोऽनुबन्धकृत् ॥

If a certain portion has been in the possession of one, that shall not be taken from him. If a man who has, at his

own will, made a partition, deviates from it, he should be compelled by the king to stick to his own share ; if he persists, he shall be punished.—(*Bṛhaspati.*) [Quoted in *Smṛtitattva* II, p. 182 ; *Vivādaratnākara*, p. 609 ; *Smṛtichandrikā*, pp. 716-717.]

NOTES

See II, 279.

The presence of the term '*Svechchhā*,' indicates that what is said here refers to a case where a man has himself made an unequal division intentionally,—and not where there has been a real mistake in the division.—(*Smṛtitattva* II, p. 182.)

'*Anubandha*' is persistence, insisting upon the deviation. —(*Smṛtichandrikā*, p. 717.)

13. मनु 9. 216.] (A) ऊर्ध्वं विभागाज्जातस्तु पित्र्यामेव हरेद् धनम् ।
(B) संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह ॥

(A) If a son is born after partition, he shall receive the property of the father only ; (B) or if any others be reunited, he should share it with them.—(*Manu*, 9. 216.) [Quoted in *Madanapārijāta*, p. 655 ; *Vivādachintāmaṇi*, p. 248 ; *Mitākṣarā*, p. 653 ; *Vivādachandra*, 20. 1—8 ; *Dāyabhāga*, p. 243 ; *Vibhāgasāra*, 13. 1—9 ; 18. 1—4 ; *Dāyanirṇaya*, 22. 1—6.]

NOTES

See II, 440 and 286.

(A) After the partition has been made,—in which the father has taken two shares,—if a son happens to be born, he shall receive these two shares, if the father so desires, either during the father's lifetime or after the death of the father ; and the brother shall not objeot to his having two shares. If, however, the father has expressed no such wish, then the additional son shall be assigned by the others a share equal to their own.—(B) If some of the sons become reunited with the father, after the partition has been made, then the father's share shall go to them ; and the additional property accruing therefrom shall be consigned by them as the share of the other brothers. This property thus accrues to the son united with the father.—(*Medhātithi.*)

'*Pitryameva,*' only the father's share.—This indicates that at the time of partition the father also has a share.—If several sons are born after the partition, then also that same share of the father shall be shared by them among

themselves.—'*Samṣṛṣṭāḥ*,'—if some of the brothers become reunited with the father, then the father's share shall be joined to their own shares and the whole divided among themselves.—(*Sarvajñanārāyaṇa.*)

Where at the wish of the sons, the father has made a division of the property during his lifetime,—if another son is born to him after that partition, this son, on the father's death, shall receive only what belonged to the father.—If the sons who had been separated have become reunited, and their properties amalgamated, then the said son shall share that (amalgamated) property with the reunited sons.—(*Kullūka.*)

In all cases where the division of the property has been made by the father, if a child is born after the partition, what is to be done ? The text supplies the answer to this question.—On the father's death, he shall receive the property that had fallen to the share of the father at the time of partition.—If some have become reunited with the father, the father shall divide the property equally among these and the newly-born son.—In a case where the mother has evinced signs of pregnancy before the father's death,—if there is no 'father's share' (which could go to the posthumous son), the brothers, even though divided, shall assign a share to that son.—(*Rāghavānanda.*)

'*Pitryameva harēt*,'—he shall receive only the father's share ; and he cannot amalgamate the shares consigned to the brothers, and then divide the whole over again, with a view to receiving equality of shares.—The second half adds an exception to this : If the sons have become reunited with the father, he shall divide it equally among them.—(*Nandana.*)

If the sons have become reunited with the father, the father shall divide it among them.—(*Rāmachandra.*)

If some sons, who had been divided, have become reunited with the father, then the son born after partition shall share the property with them.—(*Madanapārijāta*, p. 655.)

The latter half of the verse declares the right of the reunited son only to the inheritance, hence it is only when there is no reunited son, that a separated son shall be entitled to inherit.—(*Vivādachintāmaṇi*, p. 248.)

If certain sons, who had been separated from the father, have become reunited with the father, then, after the father's death, the son born after partition shall share it with those reunited sons.—(*Mitākṣarā*, p. 653.)

The sons born to the father after partition receive the father's share only ; and so long as such sons are there, the other sons shall have no share in the father's property (from whom they had separated). If however any of these latter had become reunited with the father, then he also shall have a share in the father's property.—(*Vivādachandra*, 20.1–8.)

What the particle '*eva*' 'only' in '*pitryameva*' 'father only,' indicates is that, if the son has been in the womb at the time of partition, he receives his share out of the shares of his brothers,—but if his conception has taken place after the partition, then he receives that share which had fallen to his father.—(*Vibhāgasāra*, 13. 1—10.)

In a case where the father and son have become reunited after partition,—if there is another son who is still separated from the father,—and no other son is born after the said 're-union'—the whole property of the father shall go to the reunited son, not to the son who is separated.—(*Dāyanirṇaya*, 22. 1—5.)

14. याज्ञवल्क्य 2.123.] (A) विभक्तेषु सुतो जातः सवर्णायां [*v.l.*, विभक्तेऽपि सवर्णायाः पुत्रो जातो] विभागभाक् ।
(B) दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात् ॥

(A) If a son is born from a wife of one's own caste, after the sons have been divided, that son shall receive a share (in the shape of the property of the parents); (B) or he shall receive his share out of what may be found (with the brothers), after taking into account the income and expenditure.—(*Yājñavalkya*, 2. 123.) [Quoted in *Vivādaratnākara*, p. 539; *Vivādachintāmaṇi*, p. 227; *Smṛtichandrikā*, p. 711; *Parāsharamādhava*, p. 340; *Dāyabhāga*, p. 132; *Vīramitrodaya*, p. 589; *Vyavahāramayūkha*, p. 105; *Vibhāgasāra*, 13. 5.]

NOTES

(A) Inasmuch as it is a settled fact that partition takes place among members whose *ownership* over the property is already there,—if there is a case in which partition has taken place before the mother has passed the child-bearing age,—and a son is born after that partition,—this latter also has some connection with the property; and this could be possible if the ownership of this son were already in existence; if the son's connection with the property were brought into existence by partition, then there would be no such connection for the son born after partition. As a matter of fact however his connection with the property is there already.—The verb '*syāt*,' 'should be' has to be supplied after '*vibhāgabhāk*.'—Though it is not stated to what share he is entitled, it is to be understood that it is the father's share to which he is entitled; as says Gautama—'the son born after partition receives the father's share.'—(B) In case the father has no property of his own, the son born after partition should receive his share out of such property of his brothers as may be 'visible'; but with this difference that the property of the brothers should be computed after deducting from it 'the income and expenditure'; what may have been acquired by the brothers themselves being the '*income*,' and what may have been spent out of it being the '*expenditure*.' What has been left of the inherited property to the brothers,—after this deduction of income and expenditure—should be shared with the son born after partition.—(*Vishvarūpa*.)

After the property has been partitioned among the sons,—if a son be born to the father from a wife belonging to the same caste as himself,—this son receives the share of the father.—If there is no 'share of the father,' then a share for the said son shall be found out of the produce of such lands and other property as may be found after the partition has been made,—deducting from such produce, '*the income and expenditure*.'—(*Aparārka*.)

(A) This text lays down the manner in which shares may be allotted to the son born after partition.—After the sons have become separated from the father, if a son is born to him from a wife of the same caste as himself, this son '*shall receive a share.*' In the term '*vibhāgabhāk,*' the term '*vibhāga*' stands for *what is divided* (*i.e.*, property); and what the son in question 'receives' ('*bhāk*') is the 'property,' of the *parents*. But he shall receive the *mother's* share only if there is no daughter, as it has been declared that 'the daughter receives the property of the mother.'—(*Yājña.*, 2. 117.)—If the son in question is born from a wife of caste different from the father's, he receives only his own share out of the father's share; but the mother's share he receives entire.—This is what Manu has declared in the text '*Ūrdhvam vibhāgājjātastu, etc.*' (9. 216.)—Whatever has been acquired by the father after the partition shall go in its entirety to the son born after partition; as laid down in the text '*Putraiḥ saha vibhaktena pitrā yat svayamarjitam, etc.,*'—If the separated sons have become reunited to the father, then after the father's death, 'father's property' shall be shared with those brothers by the son born after partition; as declared by Manu (9. 216).—(B) The second line lays down the rule regarding the case where a son is born after the existing sons have divided the property after the father's death.—The word '*tadvibhāgaḥ*' means 'the *vibhāga,*' share, of the son born after the father's death and after the partition of the brothers, from the mother in whom signs of pregnancy were not perceptible at the time of partition by the brothers.—"From where would this share come?"—'*Dṛshyāt,*' out of what is found, *i.e.*, out of the property inherited by the brothers,—such of this property as may be '*computed after taking into account the income and expenditure.*' '*Income*' stands for the daily, monthly or yearly produce, and '*expenditure*' for the repaying of the father's debts; what remains of the property after these two items have been deducted,—out of that his share is to be given to the son in question. That is to say, the brothers shall add to their individual shares all the income that may have accrued to each of them since partition,—then they shall repay all the debts left by the father;—then each of them shall contribute a part of his share and thereby make up a share for the brother born after partition, which should be equal to their own individual share.—This same rule applies to the case where one of the brothers, who had no children at the time of partition, has a son born to him (*after his death*—says *Bālambhaṭṭī*), from his wife in whom signs of pregnancy were not perceptible (before his death). In cases where such signs have been perceived, the partition should be postponed till delivery takes place. This has been declared by Vashiṣṭha in the text—'*Atha bhrātṛṇām dāyavibhāgaḥ Yāshchānapatyāḥ, etc.* (17. 41).—(*Mitākṣarā.*)—[On this, the *Bālambhaṭṭi*—What is meant is that the parental property, even though partitioned, is, in this case, as good as not-partitioned; because even at the time of the partition the son in question was already in existence in the mother's womb, and as such he is entitled to a share in the parental property as also in the income that may have accrued to it. If the posthumous child is a son, he receives a share equal to that of each of the sons, and if it is a daughter, she receives the fourth part of the share that should have gone to a son of the same caste as that daughter.]

This text lays down the rule regarding the share of the son born after partition.—(A) After the sons have been divided, if a son is born to one of a wife belonging to the same caste as himself, he receives a share, *i.e.*, a proper share out of the entire property that has been divided among the brothers,—after deducting from it the accretions to it (since partition) and the expenses incurred out of it.—(B) In case the son born after partition is entirely devoid of good qualities, then he shall receive a share only out of what may be 'found' or 'visible' in the shape of cows, buffaloes and the like, after taking into account the accretions and losses.—It might be argued that—"in accordance with Nārada's text '*Māturnivṛtte rajasi, etc.*,' there should be no partition while there is any likelihood of another brother being born, and hence how could there be any *son born after partition?*"—But the answer to this is that the declaration of Nārada is set aside by the strong desire of the father (to make a partition even while there is chance of his having more sons). If this were not so, then the present text of *Yājñavalkya* would have no sense at all. In fact the present text refers to cases where the child was already in the womb at the time of partition. In regard to the son *conceived* after partition, we have Manu's rule—'*Ūrdhvam vibhāgajjātastu, etc.*'; also Bṛhaspati's—'*Pitrā saha vibhaktā ye, etc.*,' and '*Putraiḥ saha vibhaktena, etc.*'

This text—as also Viṣṇu's text '*Pitṛvibhaktā, etc.*'—refers to the case of a son who was in the womb at the time of partition and was born *after* the partition; and the meaning is that a son who was in the womb at the time of partition and is born after the partition should be given his share made up of something given out of his own share by each of the brothers who have inherited the property by partition. A son other than the said one (*i.e.*, one who was *not* in the womb at the time of partition), who is born after partition, shall receive the father's share, as declared by Manu and others; and this declaration refers to the son whose conception was definitely known at the time of partition, as in cases where signs of pregnancy are distinctly perceptible, there can be no partition (till delivery takes place);—says the author of the *Prakāsha.*—Halāyudha, quoting Yājñavalkya's text after that of Viṣṇu, says—The meaning is that in case the son born after partition from a wife of the same caste as oneself, is endowed with good qualities, he receives his due share out of 'all that may be found' (*dṛshyāt*), in the shape of the property previously partitioned; if, on the other hand, he is devoid of good qualities, then he receives his share only out of what is 'visible' (*dṛshyāt*), in the shape of the grains, etc., produced from the lands; after deducting from the produce the debts that the brothers might have incurred; he shall receive what is left.—(*Vivādaratnākara,* pp. 539-540.)

'Sons born after partition' are of two kinds: (*a*) one who is in the womb at the time of partition, and (*b*) one who is conceived after the partition. It is the former that is referred to in the present text.—'*Vibhāgabhāk,*' *i.e.*, becomes entitled to receive a share.—'*Dṛshyādvā,*'—*i.e.*, out of that property alone which may be 'visible'; *or* out of both kinds of property, what is 'visible' and what is 'not visible,'—which had been received by the brothers at the partition.—'*āyavyayavishodhitāt,*' out of what remains after the deducting of the subsequent accretions and the subsequent expenses; that is, the son in question receives his share out of the property (inherited by his brothers)

after deducting from it what may have been spent already as also excluding from all that may have been added to it subsequently to the partition. The option (regarding the share being given out of the 'visible' property only or out of both 'visible' and 'invisible' property) is in reference to the son possessing or not possessing special qualifications,—says Halāyudha.—(*Vivādachintāmaṇi*, p. 228.)

This refers to cases where a son has been born after the partition made after the father's death. During the father's lifetime signs of pregnancy were not clear in the mother,—after the father's death when the sons have divided the property among themselves, a son is born to the mother; this son receives a share; '*vibhāga*' is the same as '*bhāga*'; that is, he receives a share made of portions taken from the property already partitioned.—*Or* he shall receive his share 'out of what is visible,'—that is, such property as household utensils, conveyances, milch cattle, ornaments, slaves and so forth;—the exact extent of these being determined by taking into account the accretions and the losses;—out of all this, which had been previously partitioned, the son born after partition shall receive his share.—The term '*dṛshya*,' 'visible,' serves the purpose of precluding the assigning of his share out of such articles as are *hidden*.—Though the son born after partition is as good a son as others, yet, inasmuch as his existence could not be known at the time of partition, it is only fair and equitable that there should be a slight diminution in the share allotted to him;—it is in view of this that the second alternative has been set forth.—At the same time as the fact of his existence being not known at the time of partition was not due to any fault of his, there is no any great impropriety in the first alternative either.—(*Smṛtichandrikā*, pp. 711-712.)

This refers to the case of a son born after the partition that is made after the death of the father. The meaning is that in a case where a son is born from a mother in whom signs of pregnancy were not visible at the time of partition made after the father's death,—to that son a share shall be given out of the property that is 'visible,'—that is, which has been taken by the brothers,—which has been computed after taking into account the accretions and the losses.—(*Parāsharamādhava*, pp. 340-341.)

This refers to ancestral property.—(*Dāyabhāga*, p. 132.)

This rule is meant for the sons born after the partition.—In a case where, either by the wish of father or by the wish of the sons, partition is made during the lifetime of the parents,—and after that another son is born of a wife belonging to the same caste as the husband,—this son shall receive a share,—*i.e.*, he receives the '*vibhāga*,' *i.e.*, '*bhāga*,' *share*, of the parents. That is to say, the said son receives the share of the parents after their death, with this difference that the mother's share he shall receive only if there is no daughter.—The addition of the qualification '*savarṇāyām*,' 'from a wife of the same caste,' implies that if the son is born of a wife belonging to a caste other than that of the husband, then he receives only his own share out of the father's share—not the whole of it; but of the mother's property he shall receive the whole, if there is no daughter.—On this same principle, in cases where the partition has been made during the father's lifetime, the son born after the partition, of a wife not of the same caste as her husband, receives only that share to which his caste entitles him. To this end, we

have Manu's text—'*Ūrdhvam vibhāgājjātastu*, etc.'—(*Vīramitrodaya*, pp. 589-590.)

This refers to cases where after the partition made after the father's death, a son is born of the mother, or her co-wife, or of the brother's wife,—in whom signs of pregnancy were not perceptible at the time of partition.—The share of this son is to be made up by each of the brothers giving a portion out of his share in such a manner as to make the share of the new-born equal to their individual shares.—(*Vyavahāramayūkha*, p. 105.)

The meaning is that if a son was in the womb at the time of division, and is born subsequently, he also becomes entitled to receive a share ;—'*āyavyaya-vishodhitāt*,' after taking into account the increase and decrease ; that is, he receives his share in the property from what remains of it after paying off the expenses.—'*Dṛshyādvā*,' *i.e.*, out of what is visible as well as what is not visible,—both kinds of what they had got at the time of the partition. '*Āya*,' is *increase*, and '*vyaya*,' decrease ; hence he shall receive his share out of what remains after paying off the liabilities,—but not including under it anything that may have accrued since the partition. According to Halāyudha the optional alternatives are in reference to the person being endowed or not endowed with superior qualifications.—(*Vibhāgasāra*, 13. 1–6.)

15. विष्णु 17. 3.] पितृविभक्ता विभागानन्तरोत्पन्नस्य भागं दद्युः ।

Those who have become separated from the father shall give a share to the brother that may be born after the partition.—(*Viṣṇu.*) [Quoted in *Vivādachandra*, 20. 1—8.]

NOTES

See II, 287.

The divided sons shall make good the share of the son who may have been in the womb at the time of the partition,—irrespectively of the fact of the pregnancy being known or unknown to people.—(*Vivādachandra*, 20. 1–8.)

16. देवल] पितर्युपरते पुत्रा विभजेयुर्धनं पितुः ।
अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते ॥

On the death of the father, the sons shall divide the father's property ; because so long as the father, free from defects, is living, the sons have no proprietary right.—(*Devala.*) [Quoted in *Aparārka*, p. 718 ; *Smṛtichandrikā*, p. 600 ; *Vivādaratnākara*, p. 456 ; *Parāsharamādhava*, p. 328 ; *Dāyabhāga*, pp. 13, 28 ; *Vīramitrodaya*, p. 524 ; *Smṛtitattva* II, pp. 162, 168, 169 ; *Vyavahāramayūkha*, p. 90.]

NOTES

'*Asvāmyam*,' no independence.—(*Aparārka*, p. 718.)

The term '*asvāmyam*' should be taken in the sense of 'non-independence'; because it is a well-recognised fact that even while the faultless father is living, his sons have a right to the property, by virtue of their birth.—(*Smṛtichandrikā*, p. 600; also *Parāsharamādhava*, p. 328.)

'*Nirdoṣe*,'—free from such defects as 'being an outcast' and the like.—(*Vivādaratnākara*, p. 456.)

This text makes it quite clear that sons have no rights of ownership over the father's property.—(*Dāyabhāga*, p. 13.)—This asserts, without any reservations, that the sons have absolutely no right over any kind of property, so long as the father is living.—(*Ibid.*, p. 29.)

Devala clearly asserts that so long as the parents are alive, the sons have no rights (ownership) over their property. The second half of the verse asserts the 'absence of the sons' ownership' as a reason for what has been said in the first half.—'*Nirdoṣe*,'—free from such defects as *being an outcast* which would deprive him of all his rights.—(*Vīramitrodaya*, p. 525.)

'*Nirdoṣe*,'—who is not an outcast.—(p. 162.)—The sense of the text is that the property can be partitioned only with the consent of the father.—(*Smṛtitattva* II, p. 168.)—'*Pituḥ dhanam*,'—the property that has come to them from the father.—(*Ibid.*, p. 169.)

The first half of the verse lays down the time for partition; as it is only this first sentence that contains the injunctive word; the second sentence contains only a commendatory declaration which has to be taken as asserting the fact of the sons not being independent, and not (in the literal sense) as denying their ownership.—(*Vyavahāramayūkha*, p. 90.)

17. बृहस्पति 25. 12-13.]

पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम् ।
विद्याशौर्यादिना वाऽऽप्तं तत्र स्वाम्यं पितुः स्मृतम् ॥

If an ancestral property, which had been lost, is recovered by the father by his own effort,—and if the father has acquired a property by learning, valour and such means,—over all this the father's ownership has been declared.—((*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 650.]

NOTES

All that is meant is that the father is free to do what he likes with such property.—(*Smṛtichandrikā*, p. 650.)

See also under next chapter on 'Division by Father During His Lifetime.'

See also Manu 9, 209 under II (2)—to the same effect as this text.

18. शङ्खलिखित] रिक्थमूलं हि कुटुम्बम् । अस्वतन्त्राः पितृमन्तः—मातर्य्येवमवस्थितायाः ।

The family depends upon inheritance. Those whose fathers are living are not free : so also while the mother is alive.—(*Bṛhaspati.*) [Quoted in *Smṛtitattva* II, p. 170.]

NOTES

What is meant is that while the mother or father is alive, it is not right for the brothers to be separated.—(*Smṛtitattva* II, p. 170.)

19. कात्यायन] स्वयं चोपार्जितं पित्रा न पुत्रः स्वाम्यमर्हति ।

The son has no rights over what has been acquired by the father himself.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 650.]

NOTES

All that is meant is that there can be no partition of such property by the mere wish of the sons ; and the assertion is not to be taken in its literal sense.—(*Smṛtichandrikā*, p. 650.)

20. मनु 8. 416.] भार्या पुत्रश्च दासश्च त्रय एवाधनाः स्मृताः [*v.l.*, निर्धनाः सर्व एव ते] ।

The wife, the son and the slave—these three have been declared to be propertyless (*Manu*, 8. 416.) [Quoted in *Smṛtichandrikā*, p. 653 ; *Vīramitrodaya*, p. 525 ; *Smṛtitattva* II, p. 180 ; *Vyavahāramayūkha*, p 154.]

NOTES

See Chap. I, Sec. 16, and III, 39.

All that this means is that the persons mentioned are not free to spend out of the property, and not that they have no property at all ;—hence they can make use of the property with the permission of the person to whom they belong.—(*Smṛtichandrikā*, pp. 653-654.)

All that is meant by this is that the persons are dependent upon another person.—(*Vīramitrodaya*, p. 525.)

What is meant is that the wife, the son and the slave are not free to deal with their self-acquired property, without the consent of the husband, the father and the master respectively.—(*Smṛtitattva* II, p. 180.)

This refers to such property as has been acquired by means of arts, crafts and the like ; it cannot be right to assert that these persons are not free to deal with even such property as has been obtained by them by way of 'dowry' and the like. That this is so is made clear by Manu 9. 199.—(*Vyavahāra-mayūkha*, p. 155.)

21. नारद] पितृ प्रसादाद् भुज्यन्ते वस्त्राण्याभरणानि च ।
स्थावरं तु न भुज्येत प्रसादे सति पैतृके ।

Clothes and ornaments (left by the grandfather) are enjoyed (by the grandson) through the favour of the father ; in the matter of immovable property, however, the enjoyment is not contingent upon the father's favour. —(*Nārada*). [Quoted in *Mitākṣarā*, pp. 606-607 ; *Aparārka*, p. 780.]

NOTES

This refers to immovable property acquired by the grandfather, after the grandfather's death, though the property left by him is common to the son and father (*i.e.*, the grandson and son of the dead grandfather), yet, the movable part of that property—such as gems, pearls and the like belong to the father, the immovable part of it belongs in common to the father and son.—(*Mitākṣarā*, p. 607.)

Over the grandfather's property the ownership of the father (the grandfather's son) is not absolute, and hence the latter cannot give away the immovable part of the property.—(*Subodhinī* on *Mitākṣarā*.)

This prohibition of the giving away of the immovable property by the father does not apply to his self-acquired property.—(*Bālambhaṭṭī* on *Mitākṣarā*.)

Section II (2)

DIVISION OF PROPERTY BY FATHER DURING HIS LIFETIME

22. ऋग्वेद 1. 70. 10.] गोषु प्रशस्तिं वनेषु धिषे भरंत विश्वे बलिं स्वर्णः
वि त्वा नरः पुरुत्रा सपर्यन् पितुर्न जिव्रेर्वि वेदो भरन्त ॥

Thou settest value on our cows and woods; all shall bring tribute to us, to the light.

Men have served thee, in many and sundry spots; parting as it were, an aged father's wealth.—(*Ṛgveda* 1. 70. 10.)

NOTES

This indicates that in the father's old age, the sons might divide the paternal property.

23. ऐतरेय ब्राह्मण 5. 14.] नाभानेदिष्ठं वै मानवं ब्रह्मचर्यं वसन्तं भ्रातरो निरभजन्।......स पितरमेत्याब्रवीत् त्वां ह वाव मह्यं तताभाक्षुरिति। तं पिताऽब्रवीत् मा पुत्रक तदादृथाः। अङ्गिरसो वा इमे स्वर्गाय लोकाय सत्रमासते।...तेषां यत् सहस्रं सत्रपरिवेषणं तत्ते स्वर्यन्तो दास्यन्तीति'।

While Nābhānediṣṭha, the son of Manu, was still in residence as a religious student, his brothers divided the property (among themselves, excluding him) . . . . Nābhānediṣṭha came to his father and said to him—My share they have left with you. Thereupon the father said—Do not believe what they say. The Aṅgirasas are performing the *Sattra* calculated to lead to heaven. There are a thousand riches collected by them for the *Sattra*; when going to heaven, they will give it all to you.—(*Aitareya-Brāhmaṇa*, 5. 14.)

NOTES

This also indicates that in the father's old age, the sons may divide the property, even without his consent.—The latter part of this passage has been taken as indicating that the property divided was *movable* property, not *lands*.

24. तैत्तिरीयसंहिता 3. 1. 9. 4.] मनुः पुत्रेभ्यो दायं व्यभजत् ।

Manu divided the inheritance among his sons.—(*Taittiriya-Samhitā*, 3. 1. 9. 4.)

NOTES

This indicates the practice of the father making a division of the property during his lifetime.

25. याज्ञवल्क्य 2. 114.] विभागं चेत् पिता कुर्यात् स्वेच्छया विभजेत् सुतान् ।
ज्येष्ठं वा श्रेष्ठभागेन, सर्वे वा स्युः समांशिनः ॥

If the father makes the division, he shall divide the sons according to his wish;—he shall (*or* may) assign a superior share to the eldest ;—or all may have equal shares.—(*Yājñavalkya*, 2. 114.) [Quoted in *Mitākṣarā*, p. 647 ; *Smṛtichandrikā*, p. 609 ; *Vivādaratnākara*, p. 464 ; *Vivādachintāmaṇi*, pp. 196, 197 ; *Madanapārijāta*, p. 645 ; *Parāsharamādhava*, p. 334 ; *Vīramitrodaya*, p. 551; *Smṛtitattva* II, p. 168; *Vyavahāramayūkha*, p. 96.]

NOTES

When the father, desiring to enter upon the next life-stage, proceeds to make a division of his property among his sons,—with a view either to afford such of them as are possessed of superior qualities an opportunity for the performance of religious acts, or to mere curiosity on his own part ;—he may give to any son whatever he likes to give ; and he should not be guided by the wish of his sons, *i.e.*, the father is not to be guided by the sons in the allotment of shares. Thus if he considers it right and proper, he may allot a superior share to the eldest son,—or more or less as he likes. Or he may make all the sons equal sharers. In either case, the father's own wish should be the determining factor.—(*Vishvarūpa.*)

'*Vibhāga*' means the 'making or allotting of shares in the property of the father and other ancestors, with reference to the sons and other heirs.'—In regard to this the universal rule is that 'the father shall divide the father's property,'—under special circumstances, the sons also do the dividing. Now what the present text means is that 'if the father makes the division, he should divide the property among his sons, giving to each of them more or less as he wishes, *i.e.*, he should assign their shares in the form 'of my property, this portion shall be yours and that of so and so.' . . . The term '*ichchhayā*,' 'according to his own wish,' is meant to emphasise the fact that it is open to the father to give more to one and less to another son. This unequal division has been sanctioned by several scriptural texts, *e.g.*, Manu has declared that 'the twentieth part of the property is to be set aside as the special share of the eldest son' and so forth (*Manu*, 9. 112), and such unequal division shall be made according to the wish of the person who is making the division ;—such is the meaning of the

sentence '*ichchhayā vibhajēt Sutān.*' ... The implication of this is that the wish of the sons cannot bring about the division; this has been clearly stated by Manu in the text—'*Ūrdhvam pitushcha ... anīshāstē hi jīvatoḥ.*'—'*Vibhāgam chēt pitā kuryāt,*' '*If the father makes the division.*'--This refers to the father's self-acquired property; because in regard to the property acquired by the grandfather and other ancestors, the right to partition belongs equally to the father and his sons; as has been made clear by Viṣṇu—'*Pitā chēt putrān, etc.*'—(*Aparārka.*)

When the father wishes to make the partition, then he should '*divide,*'—from himself—'*according to his wish*'—'*the sons,*'- *i.e.*, one, two or many, as may be the case.—There being no restraint upon a man's 'wish,' the text lays down a restriction—'*he shall assign a superior share to the eldest*'; which means that he shall give the best share to the eldest, the middling share to the middle and the worst to the youngest.—The term '*vibhājēt*' is to be construed with this second sentence also. The 'superior share' has been indicated in Manu 9. 112.—The particle '*vā,*' 'or,' is in reference to the next alternative, '*or all may have equal shares,*' *i.e.*, the eldest and other sons may all be given equal shares.—This unequal division pertains to the self-acquired property of the father; because in regard to the ancestral property, the rights of the father and son being equal, there would be no propriety in any unequal division made by the father's wish.—'*If the father makes the division,*'—this indicates that one time for partition is that when the father wishes to do it.—Another time for partition has been mentioned by Nārada, in the text '*Ata ūrdhvam pituḥ putrāḥ, etc., ... māturnivṛttē rajasi*';—also Gautama.—The third time for partition is that when the father is found to be addicted to unrighteous paths or has become a chronic invalid, when, even though he may be unwilling, the sons may divide the property by their own wish; as has been declared by *Shaṅkha,* '*Akāmē pitari, etc.*'—(*Mitākṣarā*) —'*If the father makes the partition,*'—this refers to the father's self-acquired property.—(*Mitākṣarā,* p. 647.)

This text describes the division made by the father during his lifetime. If the father makes the division of the property that he has himself acquired or which he has recovered from strangers, then he may divide the sons according to his wish, giving to them more or less as he chooses. So says Viṣṇu also—'*Pitā chēt putrān vibhajēt, etc.*'; also Manu '*Paitṛkantu pitā, etc.*'—apart from the property acquired or recovered by the father, if there is any other property that the father is going to divide, then in that all the sons shall be equal sharers.—(*Vīramitrodaya-Ṭīka* on Yājñavalkya.)

There are two methods of partition:—(1) the absolutely equal division, favoured by Kātyāyana ('*sakalam dravyajātam, etc.*'), and (2) the assignment of a superior share to the eldest son, and the equal division of the rest, favoured by Baudhāyana ('*Dhanamēkam chāru samuddharējjyēṣṭhaḥ*); in any given case, which of these two methods shall be adopted should depend entirely on the father's wish; and the wish of the sons shall have nothing to do with it.—(*Smṛtichandrikā,* p. 609.)

This refers to the father's self-acquired property; because over the ancestral property the rights of the father and the son are equal.—(*Vivādaratnākara,* p. 464.)

This freedom of the father is only in regard to his self-acquired property.—(*Vivādachintāmaṇi*, p. 196.)

This text mentions the first occasion for partition. There are four occasions for partition : (1) During the lifetime of the father, whenever the father wishes it ; (2) when the mother has ceased to bear children and the father has become averse to worldly desires, when the son evinces a desire for partition, even though the father does not wish it ; (3) though the mother has not ceased to bear children, and though the father does not desire partition, yet the sons pesire it, by reason of the father having become too old or addicted to evil ways or attacked by an incurable disease ; (4) after the father's death.—(*Madanapārijāta*, p. 645.)

When the father wishes to make the partition, then he may divide the sons from himself, according to his own wish ; the one arbitrary method of division is that in which 'the eldest receives a superior share' ; the other method is that all the sons should be equal sharers. The unequal division here mentioned refers to the father's self-acquired property ; in the ancestral property all would have equal rights, and hence an unequal division merely by the father's wish would be wrong.—(*Parāsharamādhava*, pp. 332-333.)

By asserting that 'if he so wishes it, the father may divide the sons,' the text indicates that the appearance of the father's desire for partition is an occasion for partition ; also that it is the father who makes the division ; specially as it has been declared that 'so long as the faultless father is there, the sons have no rights of ownership.' The presence of the qualification 'faultless' indicates that if the father happens to be beset with such defects as *being an outcast* and the like, if the sons, being no longer subservient to him, should desire partition, then that also would be an occasion for partition, on which the sons would be the maker of the division.—(*Vīramitrodaya*, p. 551.)

(*a*) Division entirely according to the father's wish refers to the father's self-acquired property ; (*b*) '*superior share*,' the ordinary share along with the 'twentieth part' of the property. This division with a superior share to the eldest, as also (*c*) the equal division, pertain to the ancestral property ; as thus alone would there be a consistency with what has been asserted before.—(*Smṛtitattva* II, p. 166.)

The second line explains what is meant by division 'according to his wish' mentioned in the first half. So long as this interpretation is possible, whereby the father's choice is limited to the two methods, it would not be right to take the first line as setting forth an independent alternative, in the form of an entirely arbitrary division ; specially as if such an option were permissible, it might be possible to have such an absurd division as giving a *lakh* to one son, a single shell to the second, and absolutely nothing to the third.—(*Vyavahāramayūkha*, p. 97.)

26. याज्ञवल्क्य 2. 115.] यदि कुर्यात् [*v.l.*, दद्यात्] समानंशान् पत्न्यः कार्याः समांशिकाः ।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा ॥

If he makes equal shares, the wives shall be made equal sharers,—such to whom no *Strīdhana* has been given

either by the husband or by the father-in-law.—(*Yājñavalkya*, 2.115.) [Quoted in *Mitākṣarā*, pp. 749, 750; *Smṛtichandrikā*, p. 613; *Vivādaratnākara*, pp. 464-465; *Vivādachintāmaṇi*, p. 197; *Madanapārijāta*, pp. 662, 664; *Vivādachandra*, 20. 1. 1; *Parāsharamādhava*, p. 333; *Dāyabhāga*, p. 67; *Vīramitrodaya*, p 560; *Smṛtitattva* II, pp. 166, 179; *Vyavahāramayūkha*, p. 99; *Dāyanirṇaya*, 16. 2–6.]

NOTES

If even on the advent of old age, the father should desire to make an equal division between himself and his sons, then each of his wives should receive a share equal to that of the husband himself. This disposes of the objection that such division would be inconsistent with the declaration of Hārīta to the effect that "there is no division between husband and wife.".—(*Smṛtichandrikā*, p. 613.)

In cases where the plan of equal division has been adopted, the wives of the divider himself, as also the widowed wives of his son and grandson, should receive the shares of their respective husbands;—such of those as have not been given any *Strīdhana*, either by their husbands or by the father-in-law himself; —or those who have not received any *Strīdhana* should receive shares equal to what the *Strīdhana* would have been; in accordance with a *Smṛti-text*, the maximum of *Strīdhana* has been fixed at 2,000; even where the property of the family is very large. In cases where the property is small, the wives shall receive equal shares.—Others again have explained that the 'equal shares' here prescribed are for childless widows, with a view to the possibility of their obtaining a child by 'appointment.'—This however is not right; as there can be no 'appointment' (in the present age); and secondly, because in cases where 'appointment' would be possible, the widow's share would be determined by the law relating to such 'appointment.'—(*Vishvarūpa*.)

If the father divides the property equally for the sake of his sons, then such of his wives as have received no *Strīdhana* either from her husband or from her father-in-law should be made equal sharers with the sons, *i.e.*, each of the wives should receive the same share that has been assigned to each of the sons.—(*Aparārka*.)

This is a special rule regarding cases where the option of 'equal division' has been adopted. In a case where the father assigns equal shares to all his sons, he should assign to his wives also shares equal to that of the sons,—to those wives to whom no *Stridhana* has been given either by the husband or by the father-in-law. In cases where *Strīdhana* has been given to the wife, half-a-share shall be allotted to her.—In cases where the father divides the sons on an unequal basis—giving to the eldest son a superior share and so forth—the wives do not receive such superior shares; what they receive is a share equal to the shares into which the residue of the property—after extracting the superior share—is divided; along with such articles as have been declared

to be such as should be given to them—such, for instance, as 'utensils and ornaments' which have been declared by Āpastamba to belong exclusively to the 'wife.'—(*Mitākṣarā.*)—Even when 'body-born' sons are there, if the father is making a division during his lifetime, the wives should be allotted shares equal to the sons;—similarly also, when the property is divided after the father's death, as has been declared in *Yājñavalkya*, 2. 123.—(*Mitākṣarā*, p. 749.)—It is not right to take this text to mean that 'all that the wife shall receive should be what would suffice for her subsistence'; as, in that case the terms 'equal' and 'share' would be absolutely meaningless.—It might be held that 'if the property is a large one she shall receive what is enough for her subsistence, and if it is small, she shall receive a share equal to that of the sons';—but this would be repugnant to the injunctive character of the injunction 'the wives shall be made equal sharers.'—[Here follows a long Mīmānsī discussion.]—(*Mitākṣarā*, p. 750.)

If the father makes the sons equal sharers, then he should make his wives also equal sharers. From this it follows that, if he makes an unequal division among his sons, the wives also shall be made unequal sharers. This refers to the wives of the father, not to the wives of the son, or grandson; because it is the father who is the *divider* and it is the *divider's* 'wives' that are meant.—If there are some wives who have received some property either from the husband or from the father-in-law, then they are to receive just that amount of wealth.—According to Halāyudha, *childless* 'wives' also are meant to be included here.—In cases where *Strīdhana* has already been given, the wife is to receive only half a share—says the *Prakāsha*.—(*Vivādaratnākara*, pp. 464-465.)

Inasmuch as at the very outset, the father has been spoken of as the maker of the division, the 'wives' meant must be those of that father.—'*Equal sharers*,'—*i.e.*, those wives who have got no *Strīdhana* should receive the same amount that may have been given to others as *Strīdhana*.—In a case where what is dealt with is the father's self-acquired property,—of which he takes the greater portion and gives only a little to his sons,—it is out of his own portion that he should give to his wives the same amount that he gives to the sons. This for this reason that the giving of a separate share to the wives has been made contingent upon the division being equal, by the conditional clause '*yadi kuryāt samānāmshān*,' 'if he makes equal shares.'—(*Vivādachintāmaṇi*, pp. 197-198.)

If the father makes an equal division, among his wives there may be some who have received *Strīdhana* from their husband or father-in-law, as also some who have got no *Strīdhana*; both these sets of wives should be made 'possessed of equal wealth.' If, however, the father takes two shares for himself,—according to Nārada's text,—or 'having divided a small portion of the property among his sons, he takes for himself the larger portion'—according to the words of Hārīta,—then, he should make his wives 'equal sharers' out of what he has taken for himself.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

The term '*sama*' stands for such share as is neither more nor less;—or it may stand for the proportion of 'four, three, two, and one shares,' which may be called '*sama*,' 'equitable,' in the sense of being sanctioned by the scriptures. Under the circumstances, if the father, by his own wish, makes his sons

'partakers of *sama* (equal or equitable) shares, then his wives also should be made *sama* (equal or equitable) sharers.' For instance, if the sons born of his Brāhmaṇa wife all receive equal shares, then the wives also should receive equal shares, but if his sons of mixed castes—such as the *Mūrdhā-vasikta* and the like (born of his Kṣattriya, Vaishya and Shūdra wives),—receive three, two and one shares respectively,—then their mothers also should receive the same shares as their respective sons.—This is an exception to what has gone in the foregoing text of Yājñavalkya (2. 114).—'*Na dattam*, etc.'—If the wives have received *Strīdhana* in the form of ornaments and the like, then they shall receive 'half'; but 'half' here does not stand for 'equally divided part'; it stands for 'share' in general; and the meaning is that in this case, the wives shall receive just that amount which, along with their *Strīdhana*, would be equal to what has been received by her son,—the wife's share thus being made 'equal' to that of the son.—Against this the following objection may be raised —"This would mean that in an indirect manner the *Strīdhana* is to be divided; and this would go against all those texts which declare *Strīdhana* to be impartible."—But there can be no force in this objection; as a matter of fact, in cases where we have texts laying down exceptions to the general maxim of the 'impartibility of *Strīdhana*,' this general rule has to be taken as qualified (set aside) to that extent; and where there are no exceptions the maxim remains intact. In the present case, when we take the two texts together—(*a*) 'to whom no *Strīdhana* has been given, etc.,' and (*b*) 'when something has been given, only half shall be allotted,'—we find that by implication they constitute an exception to the general rule (of the impartibility of *Strīdhana*).—In a case where the father makes an *unequal* division, allotting a superior share to the eldest son, and so forth,—the wives are not to receive any superior share; what should be done is that after the superior share assigned to the son or sons has been extracted, the residue shall be divided equally among the sons,—the wives also receiving equal shares.—(*Madanapārijāta*, pp. 662-663.)—The present text—as also the text 'where the sons are making the division after their father's death, the mother also shall receive an equal share,'—refer to such property ownership over which rests primarily with the father; and such property is that which the father has received as his share of the ancestral property and what he may have acquired by way of gifts and other sources.—(*Madanapārijāta*, p. 664.)

If the father, by his own wish, makes the sons 'equal sharers,' then such of his wives as have not received any *Strīdhana* should also receive shares equal to those of the sons. If they have received their *Strīdhana*, they shall receive only half of the shares allotted to the sons.—(*Parāsharamādhava*, p. 333.)

On the death of the father, when the uterine brothers are dividing the property, they should give to their mother a share equal to that of her son. But this shall be done only if the mother has received no *Strīdhana*; if she has her *Strīdhana*, then she shall receive only half a share. In case the division is being made by the father, and he is allotting equal shares to the sons, then he should give to every one of his wives a share equal to a sons's share. This is what is declared by Yājñavalkya here.—(*Dāyabhāga*, p. 67.)

Those wives who have received no *Strīdhana* as a loving gift from their 'husband' or 'father-in-law';—these two are mentioned only by way of

illustration ; what is meant is—' those who have got no *Strīdhana*, '—for these wives, the share is restricted to one 'equal to the son's share.' Thus then, even in a case where the father makes an unequal division of his property by assigning to the eldest son a 'superior share,'—the wives are to receive a share equal to what the sons receive out of the residue left after the extraction of the 'superior share' ; and the seniormost among them is not to receive a 'superior share.'—(*Vīramitrodaya*, pp. 560-561.)

This implies that the childless wife is to receive a share at the time that the father is making a division of the property among his sons.—(*Smṛtitattva* II, p. 179.)

When the father is making an equal division of his property among his sons, the wife also is to receive a share.—If the wife has got her *Strīdhana*, she shall get a 'half-share,'—as declared by Yājñavalkya himself under 2, 148 ; which means that 'she shall receive as much as would make her *Strīdhana* equal to the share of the son ; - if her *Strīdhana* is larger than the son's share, then she receives no share at all.'—(*Vyavahāramayūkha*, p. 99.)

27. आपस्तम्ब II. 6. 14.] मनुः पुत्रेभ्यो दायं व्यभजत्—इति समोंऽशः—सर्वेषामविशेषात् ।

Manu divided the inheritance among his sons ;- for this reason all have equal shares, there being no difference of status among them.—(Āpastamba II, 6-14.) [Quoted in *Smṛtichandrikā*, p. 608 ; *Mitākṣarā*, p. 624 ; *Vīramitrodaya*, p. 565.]

NOTES

Here Baudhāyana lays down a righteous distribution other than the one in which the eldest brother receives an additional share. In the Vedic text quoted here—' Manu divided the inheritance among his sons '—which speaks of division done during the father's lifetime, we do not find any special rules regarding the shares of the sons ; hence on the basis of the principle that ' when nothing is specified, the shares shall be equal,' and on the basis of the Vedic text quoted, we conclude that all the sons of the father are to receive equal shares.—(*Smṛtichandrikā*, p. 608, where the text is attributed to Baudhāyana.)

From this it follows that 'unequal division,' though sanctioned by some texts, is not to be done, because it is not favoured by the people and it is contrary to the Vedic text ; from all this we get the restrictive rule that *property must be divided equally*.—(*Mitākṣarā*, p. 624, where the text is attributed to Āpastamba.)

In view of this text, unequal division, even though sanctioned by some texts, should not be had recourse to during the Kali-age. What the *Mitākṣarā* has said regarding unequal division being contrary to *Shruti* has to be examined. If it were really contrary to *Shruti*, then it would be improper for the other ages also ; as all *Smṛti* texts that countenance unequal division would be

rendered invalid by the fact of their being contrary to *Shruti*; so that in that case there would be no point in urging the fact of its being forbidden for the *Kali-age*. In reality however 'unequal division' is not contrary to *Shruti* itself; as equal division is only inferred from the *Shruti* (regarding the division made by Manu) on the basis of the principle that 'where there is no specification, the shares shall be equal' [and there is no *Shruti* text directly laying down *equal division*].—(*Vīramitrodaya*. p. 565.]

28. बौधायन] पुत्रेभ्यो दायं विभजेदिति श्रुतिः । समः सर्वेषामविशेषात् । वरं वा रूपमुद्धरेज्ज्येष्ठः [धनमेकं चारु समुद्धरेज्ज्येष्ठः] । तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति इति श्रुतिः । दशानां वैकमुद्धरेज्ज्येष्ठः—सममितरे विभजेरन् ।

"One shall divide the inheritance among the sons"—says the Shruti; this division shall be equal, all being equally entitled to it.—Or the eldest shall take the best article, as says the Shruti.—"Therefore they mark out the eldest son with wealth."—(*Taittirīya Samhitā*, II, 5. 2—7.) Or the eldest shall take one out of ten things; and the rest shall be equally divided among all.—(*Baudhāyana*.) [Quoted in *Vivādaratnākara*, p. 467; *Smṛtichandrikā*, p. 608.]

NOTES

'*Varam vā*, etc.'—From among all the things, one thing which is the best of the lot shall be taken by the eldest brother.—In support of this, a *Shruti* text is cited—'*Tasmāt*, etc.,' which means that from among the sons they mark out the eldest son as entitled to an additional share.—'*Dashānām vā*, etc.' This lays down another option; from among ten things of one kind, *e.g.*, cows the eldest shall take one as his additional share, even though the father be not willing to give it, which of the option shall be adopted shall depend upon the qualifications of the eldest son.—(*Vivādaratnākara*, p. 467.)

The singular number in '*dhanam*' implies that only one article is to be given.—'*Niravasāyayanti*,' they satisfy him.—(*Smṛtichandrika*, p. 608.)

29. आपस्तम्ब] जीवन् पुत्रेभ्यो दायं विभजेत् समम् । ज्येष्ठो दायाद इत्येके ।

While still living, the father shall divide the heritage among his sons equally; some people hold that the eldest son is the only inheritor.—(*Āpastamba*.) [Quoted in *Mitākṣarā*, p. 623.]

NOTES

The first sentence lays down equal division, and the second sentence declares the view of some people, to the effect that the entire property shall be taken by the eldest son.—(*Mitākṣarā*, p. 623.)

30. हारीत] जीवन्नेव वा पुत्रान् प्रविभज्य वनमाश्रयेत्—वृद्धाश्रमं वा गच्छेत् । स्वल्पेन वा संविभज्य भूयिष्ठमादाय वसेत् । यद्युपदस्येत् पुनस्तेभ्यो गृह्णीयात् ।

Or, while still living, the father shall divide the sons and betake himself to the forest, or he may enter the final stage ; or dividing a small portion, he may retain the greater portion, and live in the house ; if he finds his wealth becoming exhausted, he may recover the property from them (the sons).—(*Hārīta.*) [Quoted in *Vivādaratnākara*, p. 463 ; *Dāyabhāga*, p. 47 ; *Smṛtitattva* II, p. 165 ; *Vivādachintāmaṇi*, p. 198 ; *Dāyanirṇaya*, 15. 2—10.]

NOTES

'*Vanamāshrayēt*,' should proceed to another life-stage.—'*Vṛddhāshrama*,'—according to the author of the *Prakāsha*, that state of life is called '*Vṛddhāshrama*' in which the man renounces the Veda and continues to live under his son ;—according to Halāyudha and Pārijāta it stands for the fourth life-stage ; according to this latter view, '*Vanamāshrayēt*' would mean 'should take to the life of the hermit in the forest.' The particle '*vā*' clearly shows that either of the two modes of life mentioned may be adopted.—Having renounced the Veda, if he still desires to remain a householder, he should do what is stated in the sentence '*svalpena, etc.*'—'*Upadashyēt*,' if it should become exhausted.—(*Vivādaratnākara*, p. 463.)

What is stated here is that the father may divide a small portion of the property and retain for himself the greater portion.—'*Vṛddhāshrama*' is the life of the Wandering Mendicant.—(*Dāyabhāga*, p. 47.)

'*Vṛddhāshrama*' is the life of the Wandering Mendicant. This text declares that a small portion of the property, the father shall divide, and the greater portion he shall keep for himself.—(*Smṛtitattva* II, p. 165.)

'*Upadashyēt*,'—if he becomes devoid of wealth.—This text refers to the father's self-acquired property.—(*Vivādachintāmaṇi*, p. 198.)

'*Vṛddhāshrama*,' life of the Renunciate.—'*Upadashyēt*,' if he becomes poor, his wealth being exhausted.—(*Dāyanirṇaya*, 16. 1. 1.)

31. नारद] पितैव वा स्वयं पुत्रान् विभजेद् वयसि स्थितः ।
ज्येष्ठं वा श्रेष्ठभागेन यथा वाऽस्य मतिर्भवेत् ॥

Or, the father advanced in age, shall himself divide the sons,—giving to the eldest the best share, or doing it according to his wish.—(*Nārada*, 13. 4.) [Quoted in *Smṛtichan-*

drikā, p. 606; *Vivādaratnākara*, p 464; *Parāsharamādhava*, p. 335; *Dāyabhāga*, p. 55; *Vīramitrodaya*, p. 558.]

NOTES

The phrase '*vayasi sthitaḥ*,' 'advanced in age,' implies that what is stated here refers to such fathers as have unfettered freedom over the property.—The particle '*eva*' itself is sufficient to show that the partition is to be done by the father himself (and no one else); and yet the text contains the term '*svayam*,' 'himself,' which serves the purpose of precluding the necessity of obtaining the consent of the sons.—The particle '*vā*' indicates that this is an optional alternative to remaining in joint family.—(*Smṛtichandrikā*, p. 606.)

The particle '*vā*' indicates that there is an option: Either the father or the sons shall make the partition.—'*Vayasi sthitaḥ*,' *i.e.*, become devoid of certain qualities possessed by him, and hence *disabled*. —'*Shreṣṭha*,' best of all, *e.g.*, excessive.—'*Yathā vā*, etc.' *i e.*, either equally or unequally, as the father may wish.—(*Vivādaratnākara*, p. 454.)

Nārada has declared for unequal division. (*Parāsharamādhava*, p. 335.)

Having at first assigned a 'best share' for the eldest brother, the text adds 'or *according to his wish*,' which means 'if for reasons described elsewhere, the father may desire to make an unequal division'; and this implies that the 'unequal division' meant to be done by the father's 'wish' is one different from that involved in allotting the 'best share' to the eldest brother.—(*Dāyabhāga*, p. 56.)

The second half speaks of two kinds of unequal division—one consisting of the best share being allotted to the eldest brother, and the other done 'according to the wish of the father.'—(*Vīramitrodaya*, p. 558.)

32. विष्णु 17.1-2.] पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे ।
पैतामहे तु पिता पुत्रयोस्तुल्यं स्वामित्वम् ॥

If the father should divide the sons,—in regard to his self-acquired property he would be free to do what he likes; but in regard to the ancestral property, the rights of the father and son are equal.—(*Viṣṇu*, 17. 1-2.) [Quoted in *Aparārka*, p. 718; *Vivādaratnākara*, p. 464; *Vivādachintāmaṇi*, p. 196; *Dāyabhāga*, pp. 31, 53; *Vīramitrodaya*, p. 569; *Smṛtitattva* II, pp. 165, 167.]

NOTES

This refers to such property as the father may have acquired without drawing upon the ancestral property. (*Vivādaratnākara*, p. 464.)

'*Svayamupātte*,' self-acquired. The same rule applies to such ancestral property as may have been lost but recovered by the father, as laid down by

Manu -' *Paitṛkam tu pitā dravyam,* etc.'—The condition that makes the father free to do what he likes should be that the property has been acquired by him without drawing upon the ancestral property; what may have been acquired by drawing upon the ancestral property would be as 'common' between the father and son as the ancestral property itself. Thus what the text means is that in regard to the property that the father has acquired without drawing upon the ancestral property, the father is free to make the division equal or unequal; in fact its division also would depend upon his wish; it is in regard to such property that the sons have been declared to have 'no rights.'—(*Vivāda-chintāmaṇi,* p. 196.)

The clear meaning of this is—'If the father is dividing his sons, then, out of his self-acquired property he can give what he likes to his sons, either in equal or unequal shares; but not so in regard to the ancestral property; because over this the rights of the father and the son are equal, *and the father is not free to do what he likes.* This latter is what is meant by the text; and we have to reject both the interpretations—(*a*) that 'what is meant by the equality of the rights over the ancestral property is that it must be divided equally, between father and son,' or (*b*) that 'It is open to the sons to make the division.' For these reasons we conclude that 'in the ancestral property, the father receives two shares and that it can be partitioned only when the father wishes.'—(*Dāyabhāga,* pp. 31-32.) An unequal division made by the father among his sons can be right only when it is the father's own self-acquired property that he so divides.—(*Ibid.,* p. 53.)

What is meant by the 'equality' of the rights is that this property cannot be divided according to the wish of the father, in the way that his self-acquired property can. As regards his self-acquired property, the father may divide it unequally, or even against the wish of the sons; but in regard to the ancestral property, he is not free to do what he likes. Inasmuch as this is all that the text means, it cannot be taken as denying the general rule that the 'father's wish is the occasion for partition,' and the rule whereby the father receives two shares.—(*Vīramitrodaya,* p. 569.)

Even in regard to his self-acquired property, the unequal division can be justified only on such grounds as the son who is given more is more devoted to the father or has to support a larger family or is suffering from disabilities (that make him unable to earn anything on his own behalf) and the like.—(*Smṛtitattva* II, p. 165.) '*What he likes,*'—*i.e.,* in regard to giving a larger share to one son than to the other; this has no bearing on the question of the father taking two shares for himself; such a rule would also be inconsistent with what Hārīta has said regarding the father 'taking the greater portion of the property.'—(*Ibid*, p. 167.)

33. नारद] द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता ।

When making a division, the father shall receive two shares for himself. (*Nārada*) [Quoted in *Mitākṣarā,* p. 648; *Madana-pārijāta,* p. 647; *Smṛtichandrikā,* p. 611; *Vivādaratnākara,*

p. 465 ; *Vivādachintāmaṇi*, p. 198 ; *Parāsharamādhava*, p. 335, 339 ; *Dāyabhāga*, p. 44 ; *Vīramitrodaya*, p. 566 ; *Smṛtitattva* II, p. 167 ; *Vyavahāramayūkha*, p. 98 ; *Vibhāgasāra*, 3, 1—3]

NOTES

This refers to the father's self-acquired property.—(*Mitākṣarā*, p. 648.)

This refers to one who has acquired property independently by himself.—(*Madanapārijāta*, p. 647.)

'*Vibhajan*,' '*When making a division*.'—This shows that the father is to receive two shares when he is making the division during his lifetime, but not if his sons are making the division during the father's lifetime.—(*Smṛtichandrikā*, p. 611.)

[The possibility of the son's making the division during the father's lifetime is declared by Viṣṇu (*Aparārka*, p. 718)—'Even the father's self-acquired property is sometimes divided by the sons.'

'*Pratipadyeta*,' shall obtain.—'*Vibhajan*,' making the division.—(*Vivādaratnākara*, p. 465.)

When dividing the property the father shall take two shares for himself, [*i.e.* '*ātmanaḥ*' being construed with '*pratipadyeta*'] ;—it cannot mean 'when dividing *his own* property [' *ātmanaḥ*' being construed with '*dravyam*'], as this would be inconsistent with what has gone before.—(*Dāyabhāga*, p. 44.)

This 'unnequal division' pertains to other time-cycles (not to the present).—(*Parāsharamādhava*, p. 339.)

When the father is giving to his sons his self-acquired property, he should retain two shares for himself.—(*Vīramitrodaya*, p. 566.)

This does not refer to the father's self-acquired property, with regard to which he can do anything he likes ; so that in that property, his portion cannot be limited to two shares ; any such restriction would also be inconsistent with what has been said by Hārīta to the effect that 'the father may take the greater portion for himself.' For these reasons what the text says must refer to the ancestral property.—(*Smṛtitattva* II, p. 167.)

This refers to a case where the father has only one son.—(*Vyavahāramayūkha*, p. 98.)

This refers to the father's self-acquired property.—(*Vibhāgasāra*, 3. 1-3.)

34. बृहस्पति] जीवद्विभागे तु पिता गृह्णीतांशद्वयं स्वकम् ।

If the father is making the partition during his lifetime, he shall take two shares for himself.—(*Bṛhaspati*.) [Quoted in *Smṛtichandrikā*, p. 611 ; *Vivādaratnākara*, p. 465 ; *Vivādachandra*, 20. 1-2.]

NOTES

In view of the words of Shaṅkha (below), this text should be taken as referring to cases where there is only one son.

35. कात्यायन] द्व्यंशहरोऽर्धहरो वा पुत्रवित्तार्जनात् पिता ।

Of the property acquired by the son, the father shall take two shares, or half; [or, the father shall take two shares, or half, in the property acquired by himself, on the ground of his being the acquirer of the son and the property.] (*Kātyāyana*) [Quoted in *Dāyabhāga*, p. 49; *Vīramitrodaya*, p. 566; *Smṛti-tattva* II, p. 174; *Dāyanirṇaya*, 19. 1–8.]

NOTES

The meaning is that 'out of the property acquired by the son, the father is to take two shares, or half; just as he does out of the wealth acquired by himself,' it cannot mean that 'the father is to take two shares *by reason of his acquiring a son and wealth*'; because it has been held that at the partition among brothers, a person is to receive two shares on the ground of his being *the acquirer of wealth*, even though he may not have acquired a son. The correct view would be that 'if there is some relative who is entitled to a share in the property, then the acquirer is to take two shares, and if there is no such relation then he is to take the whole of it.' In that case, the mention of the 'father' and 'son' would be like the prattling of a mad man.—Then again 'acquiring' is an action which brings about ownership, and we have shown that there can be no 'ownership' over *sons*. So that there can be no '*acquiring* of the son' in the literal sense; there can be 'acquiring' of wealth only.—This text is important in so far as apart from it there is no other text which entitles the father to two shares in the property acquired by his son.—There is a further reason why this text cannot refer to the father receiving two shares in his own self-acquired property; because in the matter of his own self-acquired property the father has entire freedom as to the manner of its division, so that there would be no point in restricting his own share to 'two shares or half.' Whereas if it is taken as referring to the property acquired by the son, there is no such difficulty.—'The half' refers to the half of the entire property concerned, and not to the half of the 'two shares' (*i.e.*, one share).—The upshot is that—'if the property has been acquired by the son by drawing upon the paternal property, then out of that property, the father shall receive two shares, and each of the other sons shall receive one share; while if the son has acquired the property without drawing upon the paternal property, then the father receives half and the acquiring son receives the other half, the other sons receiving nothing'; or it may be that the father shall receive half if he is possessed of special qualifications, like learning and the like, otherwise he shall receive only two shares.—The meaning of the text is that—'In the ancestral property, as also in the property acquired by the son, the father shall receive only two shares,—

he cannot have more although he wishes it'; of his own self-acquired property, he can take as much as he likes.—(*Dāyabhāga*, pp. 49—52.)

[Having quoted the *Dāyabhāga* and rejected its interpretation, the meaning of the text is thus stated] - 'Because like the property, the son also has been acquired by the father, and as such he is dependent upon the father and hence not entitled to object to the father taking two shares.—(*Vīramitrodaya*, pp. 566-567).

'*Putravittārjanāt*'—out of the property acquired by the son. The rule regarding the father receiving two shares refers to a case where the son has acquired the property without drawing upon the paternal property, but with the help of the property of his brothers; the acquirer also is to receive two shares; and the other brothers are to receive a share each, if the property has been acquired with the help of the property of the brothers; and the father receives 'half' in cases where the property has been acquired by drawing upon the paternal property, or where the father is possessed of special qualifications.—Such is the view of the *Dāyabhāga*. If the property has not been acquired with the help of any other property, then the father receives two shares, the acquirer himself receives two shares, and the other brothers receive nothing;—where the property has been acquired with the help of the property of the brothers, these latter also shall receive a share.—(*Smṛtitattva* II, p. 174.)

The meaning of this is as follows:—If the son has acquired some property without drawing upon the father's property, in that property, the latter has two shares; so also has the acquirer; the others have no share in it,—but if the property has been acquired with the help of the paternal property, the father takes half of it, the acquirer receives two shares, and the others receive one share each; such is the opinion of the *Dāyabhāga*. [This however is at variance with the extract from the *Dāyabhāga* given above.] This *Dāyabhāga*-view however is open to objection; because if the father has only one son, then it is not possible for him to receive *two shares*. Though it has been added in the *Dāyabhāga* that "the father is to receive half of the property if he has special qualifications and only two shares, if he has no such qualifications," yet this also remains open to the same objection.—Nor can it be right to say that "the property should be divided into *three* parts, two of which should go to the father who has no special qualifications";—as in that case the father *without* qualifications would be getting more than the father *with* qualifications (the latter receiving only one-half);—and that would also be inconsistent with the declaration that 'the acquirer is to receive *two shares*.'—In fact in the case of property acquired by several sons, the father is to receive *two shares*, and in that acquired by one son, he is to receive half of it, irrespectively of his qualifications.—Thus then,—(A) when there are several sons, and the property has been acquired by drawing upon the paternal property, the father has two shares, each of the acquirers has two shares and those who did not take part in the acquiring only one share each;—(B) when there is only one son and he has acquired property by drawing upon the paternal property, the father has half of it [the other half going to the son];—(C) when the property has been acquired without drawing upon the paternal property the acquiring son alone receives a share, the others receive nothing.—(*Dāyanirṇaya* 19. 2—1, *et. seq.*)

36. शङ्खलिखित] स यद्येकपुत्रः स्यात् द्वावंशावात्मनः कुर्यात् । द्विपदचतुष्पदेषु रूपमधिकम् । वृषभो ज्येष्ठाय—गृहं यवीयसे—ऽन्यत्र पितुरवस्थानात् ।

If he has an only son, he shall take two shares for himself, also a biped and a quadruped, in addition.—He shall give a bull to the eldest, and to the youngest, the house, with the exception of the father's residence.—(*Shaṅkha-Likhita.*) [Quoted in *Aparārka*, p. 717; *Vivādachandra*, 20. 1-2; *Vibhāgasāra*, 3. 1—5; *Vivādaratnākara*, pp. 465, 466; *Vivādachintāmaṇi*, p. 198; *Vīramitrodaya*, p. 566; *Dāyabhāga*, pp. 47-48.]

NOTES

The father is entitled to two shares only if he has only one son,—not otherwise.—(*Vivādachandra*, 20. 1-2.)

Rūpamadhikam'—Having taken one thing in excess, he shall take two shares.—*If he has many sons*,—and if the eldest and the youngest are possessed of superior qualities,—a bull should be given to the eldest, and the house to the youngest. These special things are to be so given even though the father be unwilling to give them. If such were not the meaning then there would be no point in specifying these things.—This does not militate against the principle of equal division laid down by Yājñavalkya; because this latter rule is meant for cases where all the sons are possessed of equal qualifications.—The term '*ēkaputraḥ*' has been taken by Halāyudha to mean 'the eldest son.' The *Bhāṣyakāra* on the other hand does not read the term '*putra*' at all, and explains the text to mean that 'even though he be *ekaḥ*, alone, without a wife, he shall take two shares; and if he has a wife, he shall satisfy her by assigning another share to her;—among bipeds and quadrupeds he shall take one over and above the said two shares'; he proceeds to add that the additional things are to be assigned to the eldest and youngest sons only if they happen to be endowed with superior qualities; and this even though the father may be unwilling; if there is no superiority in the qualities of any sons, then the division may be equal or unequal, according to the father's wish.—'*Anyatra pituravasthānāt*,' *i.e.*, excepting the father's residence.—(*Vivādaratnākara*, p. 466.)

The meaning is as follows: The father shall take two shares, the best one among slaves, and also the best one among cattle;—one bull shall be given to the eldest son if possessed of superior qualities; the house, barring the father's residence, shall be given to the youngest son if possessed of superior qualities.—The father is to have these two shares only in the case of his having an only son.—This refers to property *not* acquired by the father; in regard to the father's self-acquired property, the father being free to make any division he likes, there would be no point in the condition '*if he has an only son.*'—The term '*eka*' (in the compound '*ēkaputraḥ*') means *superior*, and not the

number 'one'; as if it meant 'one,' it would be inconsistent with what follows regarding the 'eldest' and the 'youngest.' Thus the meaning is that 'If the man has sons who are *superior* (ēka), *i.e.*, possessed of superior qualities,—then if this superior son happen to be the eldest, he shall receive a bull; if the youngest, then the house; the other sons have to be given equal shares; and the father himself shall take two shares along with the additional slave and cattle.'—(*Vivādachintāmaṇi*, pp. 198-199.)

Shaṅkha-Likhita have declared here that the father is to have two shares only in the event of his having an only son.—The author of the *Vyavahāra-pārijāta* has explained this text as follows:—'The term '*ēka*' here stands for *superior*, and the meaning is that if the man has a son who is *superior*, *i.e.*, possessed of such qualifications as render him capable of acquiring wealth for himself,—then, when making a division between that son and himself, the father shall take two shares for himself.'—*Jīmūtavāhana* (*Dāyabhāga*, p. 48) has expounded the compound '*ēkaputraḥ*' as '*ekasya putraḥ*,' *the son of one father*, i.e., the *body-born* (legitimate) son; whereby the *kṣetraja* son becomes excluded; and the meaning according to him, is that if the father is the body-born son of his father, then in the property of this latter, he may take two shares.—This however is not right; as under this explanation, the text would pertain to the grandfather's property, to which the rights of the father and son being equal, there would be no justification for the father—even though he were the body-born son of his father—to take two shares.—The author of the *Mitākṣarā* has disregarded this text altogether.—(*Vīramitrodaya*, p. 566.)

'*Ekaputraḥ*,'—*i.e.*, the eldest brother, competent to earn. If he is not so, then the father's share will be equal to that of the son. If '*ēka*' meant the *number* 'one,' then the next word would become disjointed. (*Vibhāgasāra*, 3. 1—5.)

37. बृहस्पति 25. 12-13.] पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम् ।
विद्याशौर्यादिना प्राप्तं—तत्र स्वाम्यं पितुः स्मृतम् ॥
प्रदानं स्वेच्छया कुर्यात् भागं चैव ततो धनात् ॥
तदभावे तु तनयाः समांशाः परिकीर्तिताः ॥

(*a*) An ancestral property which had been lost for some time and recovered by the father by his own power,—(*b*) property obtained by the father through learning, valour and the like,—over all this property, the father's ownership has been ordained; he can give it away at his will or make distributions out of it. On the death of the father, his sons have been declared to be equal sharers in that property.—(*Bṛhaspati*.) [Quoted in *Smṛtichandrikā*, p. 650; *Aparārka*, p. 728; *Vivādaratnākara*, p. 461; *Vivādachintāmaṇi*, p. 196; *Vivādachandra*, 19. 2. 5; *Parāsharamādhava*, p. 339; *Vīramitrodaya*, p. 574.]

Notes

'Father's ownership'—What is meant is that the father is free to do what he likes.—The effect of this freedom is set forth in the second verse : Even without the consent of the sons, the father being free to do what he likes, it is possible for him, when making a division during his lifetime, to make an unequal division. That ancestral property which is as good as self-acquired, and that which has been actually acquired by the father himself,—in regard to the division of both these, the sons should not exercise any compulsion on the father ; this is what has been declared by Kātyāyana in the text *'Svashaktyāpahṛtam, etc.'*—(*Smṛtichandrikā*, p. 650.)

That ancestral property which had been taken away by other persons,—and which the father has recovered by his own strength,—and what the father has obtained through learning and other means,—the ownership of all this rests with the father, not with the sons.—(*Aparārka*, p 728.)

'Hṛtam,' *'lost,'*—taken away by strangers ; what could not be recovered by the grandfather on account of his weakness, and which has been recovered by the father through his strength,—as also what has been obtained by the father through learning, valour and the like.—(*Vivādaratnākara*, pp. 461-462.)

(*a*) What had been taken away by strangers and could not be recovered by the grandfather on account of his weakness,—if it has been recovered by the father ;—and (*b*) what the father has acquired by his learning ; in the distribution and the giving away of all this, the father's wish is the only determining factor ; so also in regard to what the father may have acquired by valour or other means, without drawing upon the ancestral property. Similarly of such ancestral property as has been recovered by the father without the help of any ancestral property,—the giving away and the division shall be done by the father's wish. It is only in regard to property of these kinds, that the father is free to give more to the eldest son and take two shares for himself.—(*Vivādachintāmaṇi*, pp. 196-197.)

Just as in regard to his own self-acquired property,—so also in regard to that ancestral property which he has recovered by his own strength,—the distribution is determined by the wish of the father himself.—(*Vivādachandra*, 19. 2—5.)

What had been taken away by others and could not be recovered by the grandfather, but has been recovered by the father ;—*'Svashaktyā,'* *i.e.*, without the help of the ancestral property. In the lost property that has been recovered by the father with the help of the ancestral property,—by reason of his being the recoverer, the father receives two shares.—(*Vīramitrodaya*, p. 574.)

38. नारद] मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः ।
स्थावरस्य तु सर्वस्य न पिता न पितामहः ॥
पितृप्रसादाद् भुज्यन्ते वस्त्राण्याभरणानि च ।
स्थावरं तु न भुज्येत प्रसादे सति पैतृके ॥

The father is the owner of all such articles as jewels, pearls and corals ; but of all immovable property neither the father nor the grandfather is the owner. Clothes and ornaments are enjoyed as loving gifts from the father ; but immovable property cannot be enjoyed as a gift from the father.—(*Nārada.*) [Quoted in *Aparārka*, p. 730 ; *Mitākṣarā*, pp. 606-607 ; *Parāsharamādhava*, p. 331 ; *Dāyabhāga*, p. 33 ; *Vīramitrodaya*, p. 524 ; *Smṛtitattva* II, p. 166 ; *Vyavahāramayūkha*, p. 90 ; *Dāyanirṇaya*, 18. 1—8.]

NOTES

The immovable property has been excluded here from the purview of the rule laid down by Yājñavalkya, 2. 123A. '*Pitṛbhyām yasya yad dattam, etc.*'—(*Aparārka*, p. 730.)

These texts preclude the giving away of immovable property as a loving gift ; and refer to the immovable property inherited from the grandfather. What the texts mean is that 'on the grandfather's death, though his property belongs in common to his son and grandson, yet jewels, pearls and the rest belong to the father (the grandfather's son), but the immovable property is joint between the two.—(*Mitākṣarā*, p. 607.)

This refers to such immovable property as had been acquired by the grandfather.—(*Parāsharamādhava*, p. 331.)

The mention of the 'grandfather' indicates that the text refers to the grandfather's property. Having mentioned 'jewels' and the rest, the text adds the word 'all' ; and this indicates the father as all-powerful regarding the giving away, mortgaging and selling of all kinds of property except lands and the like,—but not of the immovable property and the royalties. The second '*sarvasya*,' 'all,' precludes the giving away of what is necessary for the maintenance of the family.—(*Dāyabhāga*, p. 33.)

These two texts have been taken as negativing the making of loving gifts out of immovable property, prior to partition,—on the ground that the negativing has been accompanied by the permitting of such gifts out of the 'jewels, pearls and corals,'—and thereby concluding that out of the 'gems, etc.,' the father can make gifts without the consent of the sons, while out of the immovable property, he can do so only with their consent ; all which leads to the conclusion that ownership over property comes into existence with one's birth.—This interpretation of the texts will not be right ; because what they refer to is the property acquired by the grandfather ; and its meaning is that 'on the death of the grandfather, his ownership having ceased, though the ownership of the father and son (*i.e.*, the dead man's son and grandson) over the dead man's property appears conjointly, yet in the making of gifts, the father should require the consent of the son only in regard to immovable property, and not in regard to gems and other movable articles.'—(*Vīramitrodaya*, p. 524.)

The mention of the 'grandfather' clearly indicates that the text refers to the grandfather's property.—(*Smṛtitattva* II, p. 166.)

What this means is that the father is free only to wear such articles as the ear-ring, ring and such other articles,—not to give or sell or mortgage them ; nor does it set aside the view that the birth of the son is productive of the son's ownership.—(*Vyavahāramayūkha*, p. 91.)

According to the *Dāyabhāga*, this refers to the grandfather's property. In reality the meaning is that if the grandfather lost a son who has left a son,—then the grandfather is not free to dispose of the property as he pleases.—(*Dāyanirṇaya*, 18. 1—9.)

39. व्यास]   समानजातिसङ्ख्या ये जातास्त्वेकेन सूनवः ।
विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते ॥

बृहस्पति 25. 15.]   यद्येकजाता बहवः समाना जातिसङ्ख्यया ।
सापत्नास्तैर्विभक्तव्यं मातृभागेन धर्मतः ॥

In cases where there are several sons born to one man, from different mothers,—the sons of the different mothers being of the same caste and the same in number,—the partition commended is that made in reference to the mothers.—(*Vyāsa.*)

When there are many sons sprung from one father, equal in caste and number, but born of different mothers, a legal division of the property may be effected by adjusting the shares according to the mothers.—(*Bṛhaspati*, 25. 15.) [Quoted in *Dāyabhāga*, p. 60 ; *Vīramitrodaya*, p. 576 ; *Vyavahāramayūkha*, p. 102 ; *Vivādaratnākara*, p. 475 ; *Parāsharamādhava*, p. 342.]

NOTES

See II, 273 and 274.

In this text Vyāsa has inculcated the doctrine that during the mother's lifetime, she shall be the determining factor in the partition. The same rule is found also in Bṛhaspati. The meaning of these rules is that in a case where the caste and the number of sons (born of two mothers) are equal, and where therefore there could be no distinction made on these grounds,—the partition is to proceed on the understanding that it is being made between the mothers, and not among the sons. And the necessary corollary to this is that in such cases so long as the mother is alive, the only proper partition among the brothers would be that made with her consent. For this reason what Gautama has said regarding the 'increase of righteousness by partition' should be understood to refer to partitions made after the mother's death.—(*Dāyabhāga*, pp. 60—62.)

The caste and the number being both equal, there would be no basis for distinction among the step-brothers themselves, hence it has been enjoined that the partition is to be among the mothers, which attaches predominance to the mothers; so that the partition in this case is to be made as among the mothers, not among the sons. This is the sense of the texts. It follows, therefore, that just as in regard to the mother's property, so in regard to this property also, it would not be right for the sons to divide it while the mother is alive.—This is what *Jimūtavāhana* has said (in the *Dāyabhāga* above).—But it is not right to derive this latter implication from the present texts; because as a matter of fact the death of the mother is a condition precedent also to the partition of the parental property. And this being already secured by those texts that bear upon the first parental property,—such as '*vibhājēran sutāh pitrorūrdhvam, etc.*'—if the sense were taken to be implied by the present texts also, no useful purpose would be served by such an implication.—(*Vīramitrodaya*, pp. 576-577.)

These texts lay down cases where partition is made through the mothers.—(*Vyavahāramayūkha*, p. 102.)

From several wives, all belonging to the same caste, there are born to a man an equal number of sons from each wife,—it being impossible to make a division among the brothers (they being too numerous), the division shall be made as among the mothers.'—(*Vivādaratnākara*, p. 475.)

These texts lay down the method of partition among sons of different mothers, all belonging to the same caste, and being equal in number.—(*Parāsharamādhava*, p. 342.)

40. बृहस्पति] द्विप्रकारो विभागस्तु दायादानां प्रकीर्तितः ।
वयोज्येष्ठक्रमेणैकः समा परांशकल्पना ॥

Two methods of division have been declared for coparceners: one in order of seniority, and the other by equal shares.—(*Bṛhaspati.*) [Quoted in *Dāyabhāga*, p. 55.]

NOTES

'*In order of seniority*'—This indicates that method in which 'special shares' are given to the eldest; the other is that in which the property is divided in equal shares.—(*Dāyabhāga*, p. 55.)

41. आपस्तम्ब] एकधनेन ज्येष्ठं तोषयित्वा जीवन् पुत्रेभ्यो [*v.l.*, जीवत्पुत्रेभ्यो] विभजेत् समम्—क्लीबमुन्मत्तं पतितं परिहाप्य ।

Having satisfied the eldest son by the gift of a superior article, *the father, during his lifetime shall divide the rest*

equally [or *v.l.*, the father shall divide the rest equally among his living sons],—excluding the eunuch, the insane and the outcast.—(*Āpastamba.*) [Quoted in *Vivādaratnākara*, p. 467; *Vivādachintāmaṇi*, p. 199; *Smṛtichandrikā*, p. 608; *Vibhāgasāra*, 3. 1—5.)

NOTES

In regard to his self-acquired property, the father is free to do what he likes; but the ancestral property cannot be divided at his mere will, as the sons also have a share in it. Even so the partition made by the father should be accepted as valid.—(*Vibhāgasāra*, 3, 1—5.)

'*Jīvan,*'—*i.e.*, living, but incapable of having more sons.—'*Ekadhanena,*' by the gift of a good house or some such thing.—'*Klībam*' and the rest are meant to include all those who are not entitled to inherit property. Whether the eldest shall receive more or less shall depend upon the excellence of his qualities.—(*Vivādaratnākara*, p. 467.)

The word '*jīvat*' indicates that if a son dies, his wife is not entitled to a share, though if he leaves a son, that son does receive a share; because 'the son is the father himself' says the *Shruti*.—The *Ratnākara* reads '*Jīvan,*' which is not right; as the very fact of the father being spoken of as making the division implies that he is alive; the epithet '*jīvan*' therefore would be superfluous.—'*Ekadhanena,*' by giving some excellent article.—(*Vivādachintāmaṇi*, p. 199.)

The living father shall satisfy the eldest son by giving to him some excellent thing out of the joint property, and the rest he shall divide equally among himself and the sons, including the eldest. The special share is given by reason of his being the first born; and this share shall consist only of one good thing; what remains after giving this shall be divided equally.—(*Smṛtichandrikā*, p. 608.)

42. मनु 9. 207.] भ्रातॄणां यस्तु नेहेत धनं शक्तः स्वकर्मणा ।
स निर्भाज्यः स्वकादंशात् किञ्चिद् दत्त्वोपजीवनम् ॥

Among brothers, if any one, being quite competent through his own profession, does not desire the property, he shall be debarred from his share, after a little has been given to him by way of maintenance.—(*Manu*, 9. 207.) [Quoted in *Aparārka*, p. 720; *Smṛtichandrikā*, p. 617; *Vivādachintāmaṇi*, p. 203; *Dāyabhāga*, p. 66; *Vīramitrodaya*, p. 572; *Smṛtitattva* II, p. 171; *Vibhāgasāra*, 4. 1—8; *Dāyanirṇaya*, 22. 1. 1.]

NOTES

When several brothers are living together, and jointly manage their ancestral property by cultivation and other means, if any one of them does not help in the management,—it is the debarring of such a brother that is declared here.—'*He shall be debarred from his share,*' in the net profits of the estate . . . He however is not to be debarred from the main ancestral estate; nor will the profits also be taken away entirely from him; a part of his share of the profits shall be taken by his brothers as a recompense for their labour, and the remainder shall be given to him '*by way of maintenance.*'—Or '*nirbhājyaḥ*' may mean 'shall be separated,' not allowed to live jointly.—(*Medhātithi.*)

'*Among brothers,*' if any one does not want a share in the father's property;—to him shall be given some small property by way of maintenance, and he shall be '*nirbhājya,*' debarred from the property, by his brothers.—(*Sarvajñanārāyaṇa.*)

If a brother is able to earn wealth by serving the king and other means, and does not want to take his share in the property common to all the brothers,—he shall be given something out of his share, by way of maintenance, and separated; if this is done then his sons shall not assert their claims over that property.—(*Kullūka.*)

If a brother is able to maintain himself by other means, and does not want his share in the property, to him something shall be given, and the property divided. The giving of something is for the purpose of setting aside the claims of his sons and other descendants.—(*Rāghavānanda.*)

'*Nirbhājyaḥ*'—debarred from sharing.—(*Nandana.*)

If a brother who is entitled to a share in the property,—being free from greed, does not accept any property from his brothers, he should be '*nirbhājya*' from his share; *i.e.*, some little thing shall be given to him by way of maintenance, and he shall be separated;—if he is quite competent, with what he has acquired by his own efforts.—(*Rāmachandra.*)

'*Svakāt amshāt,*'—*i.e.*, from what the other brothers have acquired by their efforts.—(*Aparārka.*)

If a brother, who is competent to earn wealth by his own efforts, does not want the ancestral property,—then, with a view to avoid future disputes arising from the claims set up by his descendants over his share in the ancestral property,—the other brothers shall give him something out of that partible property and separate him.—(*Smṛtichandrikā,* p. 617.)

'If a brother is able to maintain himself by his own efforts, he shall not take his share in the joint property; but his brothers, who have received their shares, should make it up for him, by each of them giving a little out of his share;—such is the meaning of this text as also of Narada's text '*Kuṭumbārthēṣu yadyuktaḥ, etc.,*'—says Halāyudha.—According to the author of the *Prakāsha* however the meaning of the present text is as follows: 'When a number of coparceners are engaged in carrying on business for acquiring wealth, if any one of them, through idleness, does not do any work, he shall be debarred from the profits accruing from the business, and shall receive his share of the capital only.'—(*Vivādachintāmaṇi,* p. 203.)

If a brother, relying upon his own capacity, has no desire to take anything out of the ancestral property, he shall be given some little thing—in the shape of a seer of rice, for instance,—and then separated; with a view to preclude the possibility of claims being set up at some future time by the son and other descendants of the said brother.—(*Dāyabhāga*, p. 66.)

What is said here is in reference to a case where one of the coparceners is capable of maintaining himself by his own exertion and hence does not desire to take his share in the ancestral property.—(*Vīramitrodaya*, p. 572.)

[*Smṛtitattva* II, p. 171, repeats the words of *Dāyabhāga*.]

If a coparcener, being quite competent, renounces his share in the joint property, he should still be given something and then excluded from the property,—for the purpose of tending finality to the partition; if this were not done, his sons would raise disputes in regard to their father's share.—The *Prakāsha* has explained this text of Manu to mean that—'while all the coparceners are busy carrying on business for the acquiring of wealth, if there is any one among them who, through laziness, does not do any work, then he should be excluded from sharing the wealth acquired by means of the business that they have been carrying on; and he shall receive his share only in the original property (inherited from their father).'—(*Dāyanirṇaya*, 22. 1. 1.)

43. याज्ञवल्क्य 2. 116.] शक्तस्यानीहमानस्य किञ्चिद् दत्त्वा पृथक् क्रिया।

To one who is capable and does not want a share, they shall give something and then make the separation.—(*Yājñavalkya*, 2. 116) [Quoted in *Smṛtichandrikā*, p. 613; *Madanapārijāta*, p. 655; *Parāsharamādhava*, p. 336; *Vyavahāramayūkha*, p. 100; *Vivādaratnākara*, p. 485; *Dāyabhāga*, p. 66.]

NOTES

If a son is able by himself, without the help of the father's property, to support his family and carry on his religious duties,—then the father shall do what is here laid down.—Even though, at the time, he may not desire to take his share in the property, yet in order to guard against future dispute, something even as a token of regard, may be given to him and then the partition may be made.—(*Vishvarūpa*.)

This text provides another reason for unequal division. If a son, being capable of acquiring property for himself, does not desire a share in the father's property;—or if there is one who, though quite able to earn wealth, does not, through wickedness, put forth any effort to earn or save;—to such a son the father shall give some insignificant thing, and then make the partition; otherwise, disputes might arise with that son or with his children. This refers to such property as has been acquired by the sons jointly; in the ancestral property, of course, the said son shall receive an equal share.—(*Aparārka*.)

This lays down an exception to the two rules—'The eldest shall receive a superior share' and 'all shall be equal sharers.'—If any of the sons is capable by himself of earning wealth and does not desire any share in the father's property, then the father shall give some small thing, and then make the partition; this shall be so done in order to guard against the descendants of that son asserting their claims to the inheritance in future.—(*Mitākṣarā.*)

If a son is capable by himself to earn wealth, and does not want any share in the father's property,—then his father and his brothers shall give him something—a seer of rice, for instance—for the purpose of precluding the possibility of his son's raising difficulties in future,—and then they should proceed to make the partition.—(*Vīramitrodaya-Ṭīkā on Yājñavalkya.*)

If a son, by reason of his being able to earn his own wealth, does not want a share in the father's property, then they shall give him what little he will accept, and then proceed to make the partition.—(*Smṛtichandrikā*, p. 613.)

The partition shall be made after giving him some insignificant thing;—this for the purpose of precluding his sons asserting their claims over the inheritance.—(*Madanapārijāta*, p. 655.)

If a son is able to earn wealth for himself, and does not want his share in the father's property, they shall give him something, and then make a division of the property.—(*Parāsharamādhava*, p. 336.)

The *Mitākṣarā* says that this giving of something is for the purpose of precluding the possibility of the son's descendants asserting their claims on the property later on.—(*Vyavahāramayūkha*, p. 100.)

This is an exception to the two general rules—(*a*) 'a preferential share shall be given to the eldest brother,' and (*b*) 'they shall share equally.'—The meaning is that the man may be given something, even the most insignificant, and thus complete the partition. This for the purpose of preventing disputes being raised by the sons of the said man; —so says the *Prākasha*.—(*Vivādaratnākara*, p. 485.)

44. मनु 9. 216.] ऊर्ध्वं विभागाज्जातस्तु पित्र्यमेव धनं हरेत् ।
संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह ॥

If a son is born after partition, he shall receive only the property of the father; or if there be any sons who had become reunited with the father, he would share the property with them.—(*Manu*, 9. 216.)

NOTES

[See under II, 13 and 286.]

45. मनु 9. 134.] पुत्रिकायां कृतायां तु यदि पुत्रोऽनुजायते ।
समस्तत्र विभागः स्यात् ज्येष्ठता नास्ति हि स्त्रियाः ॥

If a son happen to be born after the daughter has been *appointed*, the division shall be equal ; as there is no seniority for the female.—(*Manu*, 9. 134.) [Quoted in *Dāyabhāga*, p. 39 ; *Dvaitaparishiṣṭa*, p. 41 ; *Vibhāgasāra*, 14. 2–8.]

Notes

See II, 201.

'*The division shall be equal*,'—there shall be equal shares with the son thus born. This precludes the 'preferential share.'—'*There is no seniority, etc.*'—the seniority precluded is in regard to the share in the inheritance only, and not in regard to the respectful treatment to be accorded to her.—(*Medhātithi.*)

'*Son happens to be born*'—to the daughter's father.—'*Seniority*'—due to the possession of superior qualities, in the shape of learning and the like, there is none possible in the case of a female ; and through her also in the son of that female (the appointed daughter).—(*Sarvajñanārāyaṇa.*)

If, after the 'appointment' of the daughter, a son is born subsequently to the man who has made the 'appointment,'—then at the time of partition between these two—the 'appointed daughter' and the subsequently born son—the division shall be equal, and there shall be no 'preferential share' for the appointed daughter ; because even though as a 'son' she is the elder of the two, yet in the matter of the 'preferential share,' she is not to be regarded as the 'senior.'—(*Kullūka.*)

What is meant by the declaration of equal division is that there shall be no 'preferential share.' Since the mother (the Appointed daughter) has no 'seniority,' therefore no seniority can belong to the son also, who therefore cannot be entitled to the 'preferential share.'—(*Rāghavānanda.*)

'*Anu jāyatē*'—is born after the 'appointing' of the daughter.—The mention of the female includes her son also.—(*Nandana.*)

This deals with a case where the partition is between the Appointed Daughter and the 'body-born' son.—*Inasmuch as she is a female*, 'seniority' does not belong to her ; and hence the division shall be in equal shares. The implication of this is that if the 'elder' is a *male*, he shall receive two shares.—(*Dāyabhāga*, p. 39.)

This text lends support to the view that the daughter has almost as much right over her father's property as the son ; as even when there is a son, the 'daughter' is to receive a share equal to that of the son, according to this text.—(*Dvaitaparishiṣṭa*, p. 41.)

In a case where a daughter has been 'appointed,' and then a legitimate son is born,—they shall share the property equally.—(*Vibhāgasāra*, 14. 2-3.)

46. मनु 9. 215.] भ्रातॄणामविभक्तानां यद्युत्थानं भवेत् सह ।
न तत्र भागं विषमं पिता कुर्यात् कथञ्चन ॥

Among undivided brothers, if there is a joint concern—the father shall, on no account, make an unequal division of it among his sons.—(*Manu*, 9. 215.) [Quoted in *Aparārka*, p. 727 ; *Vivādaratnākara*, p. 468 ; *Vivādachintāmaṇi*. p. 201 ; *Vivādachandra*, 19. 2-8 ; *Dāyabhāga*, p. 57 ; *Vīramitrodaya*, p. 561 ; *Smṛtitattva* II, p. 165 ; *Vibhāgasāra*, 3. 2-3 ; *Dāyanirṇaya*, 16. 2. 1.]

NOTES

It has been declared by Yājñavalkya (2. 116) that "an unequal division has been declared to be lawful, if made by the father."—This is what is denied here.—'*Joint concern,*' *i.e.*, where all of them together acquire wealth,—one by agriculture, another by receiving gifts, another by service, while another takes care of what is earned by others, and invests them and uses them to the advantage of all;—all such wealth shall be pooled together and divided equally, and no excessive share shall be given to any one by the father, through his love for him.—(*Medhātithi.*)

'*Saha utthānam,*'—acquiring wealth conjointly, by agriculture and other means. The father shall not give more to any one, by reason of his having put forth more work in the concern.—(*Sarvajñanārāyaṇa.*)

If among the brothers living together with their father, there is some concern carried on for the purpose of acquiring wealth,—then, at the time of the partition of that wealth, the father shall not on any account give more to any one son than to the others.—(*Kullūka.*)

This is an exception to what Yājñavalkya has declared regarding the legality of the unequal division made by the father;—'*concern,*' a business-undertaking for the acquiring of wealth.—(*Rāghavānanda.*)

'*Saha utthānam,*'—joint acquisition.—'*Viṣamam,*' unequal, by allotting a larger share to the elder son.—(*Nandana.*)

If wealth is acquired conjointly, the father shall never give an unequal share to any son.—(*Rāmachandra.*)

In cases where property has been acquired by the joint labour of all the brothers, the division shall be equal,—even when done by the father. The implication of this is that in other cases an unequal division may be made by the father.—(*Aparārka*, p. 727.)

'*Utthāna,*'—action tending to the acquisition of wealth.—(*Vivādaratnākara*, p. 468.)

This refers to such property as has been acquired by the equal exertion of each of the brothers; while what Bṛhaspati has said regarding unequal division—in the text '*Samanyūnādhikā bhāgāḥ, etc.*' refers to the father's self-acquired property; hence there is no inconsistency between the two.—(*Vivādachintāmaṇi*, p. 201.)

'*Utthāna*'—is acquiring.—If all the brothers have an equal share in the acquiring of the wealth, there shall be no unequal division.—(*Vivādachandra*, 19. 2—8.)

What is meant here is that if the sons themselves ask for partition during the father's lifetime, then the father shall not give a 'preferential share' to anyone.—(*Dāyabhāga*, p. 57.)

If there has been an equal *utthāna, i.e.*, exertion on the part of all the brothers, towards the acquiring of wealth,—then the father shall not make an unequal division.—(*Vīramitrodaya*, p. 562.)

Here Manu declares that there shall be no unequal division in a case where the sons themselves ask for partition.—(*Smṛtitattva* II, p. 165.)

'*Abhyutthānam*,'—earning, acquisition. There shall be no unequal division as it has been prohibited. In this case the father shall not receive two shares, nor will the eldest brother receive a preferential share.—(*Vibhāgasāra*, 3. 2-3.)

This refers to cases where the sons ask for partition.—(*Dāyanirṇaya*, 16. 2. 1.)

47. कात्यायन] जीवद्विभागे तु पिता नैकं पुत्रं विशेषयेत् ।
निर्भाजयेन्न चैवैकमकस्मात् कारणं विना ॥

अर्थशास्त्र II. 33.]—जीवद्विभागे पिता नैकं विशेषयेत् । न चैकमकारणात् निर्विभजेत्]

If the father makes division during his lifetime, he shall not give preference to any one son;—nor shall he suddenly debar any one from the partition,—without sufficient reason.—(*Kātyāyana* and *Arthashāstra*, II, 33.) [Quoted in *Dāyabhāga*, p. 56; *Smṛtitattva* II, p. 165; *Dāyanirṇaya*, 16. 1–8.]

NOTES

He shall not favour any one son by giving him a larger share; nor shall he debar any one from the partition, without sufficient cause. Any favour in the shape of a 'preferential share' should be shown towards several, not towards any single son. Hence no such preferential treatment is to be accorded to any individual son without sufficient cause; it may of course be done if there is sufficient reason for it.—(*Dāyabhāga*, pp. 56-57.)

'*Reason*'—such as one of them being specially devoted to him, or having a large family to support, or imbecile, and so forth.—(*Smṛtitattva* II, p. 165.)

An excessive share is not to be given to any one son, except when he happens to be either specially devoted to the father, or has many persons to maintain, or is incapacitated from doing any work, or suffers from some such disabilities.—(*Dāyanirṇaya*, 16. 1–8.)

48. सङ्ग्रहकार] यथा नियोगधर्मोऽस्य नानुबन्ध्यावधोऽपि वा ।
तथोद्धारविभागोऽपि नैव सम्प्रति वर्तते ॥

Just as the practice of Niyoga and the killing of the *Anubandhyā* cow, so also the preferential partition should not be had recourse to during the present age.—(*Saṅgrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 620; *Madanapārijāta*, p. 646; *Parāsharamādhava*, p. 336 ; *Vīramitrodaya*, p. 564.]

NOTES

Unequal division is not permissible in the present age.—The terms '*adya*' and '*samprati*' refer to the *Kali age*.—(*Smṛtichandrikā*, p. 620.)

Though the scriptures have sanctioned the unequal division, yet being opposed to usage, it is not carried out in practice ; just like the killing of the cow at sacrifices.—(*Parāsharamādhava*, p. 336.)

'*Niyogadharma*'—having recourse to the elder brother's widow who had been betrothed to him, with the permission of one's elders.—'*Anubandhyāvadha,*' the killing of the cow prescribed in the text '*Maitrāvaruṇīṅgām-anubandhyām vashāmālabheta.*'—'*Samprati,*' in the *Kali age*.—(*Vīramitrodaya*, p. 564.)

49. याज्ञवल्क्य 2. 116.] न्यूनाधिकविभक्तानां धर्म्यः [*v. l.*, धर्मः] पितृकृतः स्मृतः ।

Among sons divided unequally, what is done by the father has been declared to be lawful.—[This according to *Vishvarūpa* and *Aparārka*]; [or, if an unequal division among sons is in accordance with law, then what has been done by the father shall stand ; otherwise it shall be set aside—according to *Mitākṣarā*.]—(*Yājñavalkya*, 2. 116.) [Quoted in *Smṛtichandrikā*, p. 609; *Madanapārijāta*, p. 646 ; *Dāyabhāga*, p. 53 ; *Vīramitrodaya*, p. 559 ; *Vyavahāramayūkha*, p. 99.]

NOTES

In the case of sons divided unequally, the division that is made by the father has been declared to be the lawful one.—(*Vishvarūpa.*)

Even in the case of property acquired by the sons, if the father has made an unequal division among the divided sons, what has been done by the father should be regarded as '*Dharma,*' lawful, not to be transgressed.—(*Aparārka.*)

Unequal division has been declared in the text speaking of a 'superior share' for the eldest son ; the present text forbids any other method of unequal division except that by giving an 'additional share' which has been sanctioned by the scriptures.—If an unequal division among sons is '*Dharmya,*' 'in accordance with law,' then what has been done by the father shall remain undisturbed ; otherwise, *i.e.*, if it is not in accordance with law, it must be set aside ; as has been declared by Nārada in the text—'*Vyādhitaḥ kupitashchaiva, etc.*'—(*Mitākṣarā.*)

If the sons have been divided in a manner in which one has received more and the other less,—even such a division, when done by the father, has been declared to be lawful; hence it should not be objected to subsequently. But so far as the action of the father is concerned, it would be reprehensible, being against usage.—(*Vīramitrcdaya-Ṭīkā* on *Yājñavalkya.*)

If the eldest brother has received 'more' by reason of the 'additional share,' and the other brothers have received 'less,' on account of not receiving an 'additional share,'—and this unequal division has been accepted by them, in deference to the father's wish, then,—in view of its having been declared to be lawful,—it should be agreed to by the sons also (subsequently).—(*Smṛti-chandrikā*, p. 609.)

If the unequal division is in accordance with law, it should not be set aside; if it is not in accordance with law, it must be set aside.—(*Madanapārijāta*, p. 646.)

Out of his self-acquired property, if the father makes an unequal division, by giving more to one son,—either in recognition of his superior qualifications, or on account of his having a larger family to support, or on account of pity for his disabilities, or on account of being pleased with his devotion,—he does what is quite lawful.—(*Dāyabhāga*, p. 52.)

The meaning is that if what has been done by the father is in accordance with law, it is valid and cannot be set aside; but if it is not in accordance with law, then it must be set aside;—such is the explanation given by *Vijñāneshvara* also.—(*Vīramitrodaya*, pp. 559-560.)

If what has been done by the father is in accordance with law, it is valid, and cannot be set aside; such is the explanation by Madana, Vijñāneshvara and others.--(*Vyavahāramayūkha*, p. 99.)

50. बृहस्पति] समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः ।
तथैव ते पालनीया विनेयाः [*v. l.*, पतिताः] स्युरतोऽन्यथा ॥

Where the father has made a division, either in equal or unequal shares,—that division shall be maintained by the sons; if they do otherwise, they should be liable to punishment (*v.l.*, outcasts).—(*Bṛhaspati.*) [Quoted in *Aparārka*, p. 717; *Smṛtichandrikā*, p. 610; *Vivādaratnākara*, p. 468; *Vivāda-chintāmaṇi*, p. 201; *Vivādachandra*, 19. 2–10; *Parāshara-mādhava*, p. 335; *Dāyabhāga*, p. 53; *Vīramitrodaya*, p. 560; *Vibhāgasāra*, 3. 2–8.]

NOTES

What is meant to be precluded by this is the possibility of partition being effected by the wish of the sons.—(*Aparārka*, p. 717.)

'*Pitrā*,' *i.e.*, by the father, in accordance with the manner prescribed in the scriptures; what would not be in accordance with the scriptures would not be lawful, and hence not deserving of being respected. Even in regard to

one's self-acquired property, it would not be a lawful division if one son received a thousand gold-pieces and the other only a single shell. Hence there can be no doubt that in case the unequal division has been made in an unauthorised manner,—and if the sons object to it,—it cannot be maintained.—(*Smṛtichandrikā*, p. 610.)

[*Vivādaratnākara*, p. 468 attributes this verse to Nārada-Bṛhaspati-Yājñavalkya.]

This refers to the father's self-acquired property.—(*Vivādachintāmaṇi*, p. 201.)

What is meant is that in regard to his self-acquired property, the father is entirely free to take two shares for himself, or to give something to the sons and take all the rest for himself, or to make an unequal division among the sons themselves.—(*Vivādachandra*, 19. 2—10.)

51. नारद 13. 15.] पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः ।
तेषां स एव धर्म्यः स्यात् सर्वस्य हि पिता प्रभुः ॥

If the sons have been divided by the father himself, either equally or unequally,—that division shall be legal for them ; as the father is all-powerful in regard to all.—(*Nārada*, 13. 15.) [Quoted in *Aparārka*, p. 717 ; *Smṛtichandrikā*, p. 609 ; *Vivādaratnākara*, p. 468 ; *Parāsharamādhava*, p. 335 ; *Dāyabhāga*, p. 53 ; *Vīramitrodaya*, p. 560 ; *Vyavahāramayūkha*, p. 99 ; *Dāyanirṇaya*, 16. 1-2.]

NOTES

This cannot be taken as referring to the declarations regarding the "additional share" ; as such a view would not be compatible with the father being spoken of as the 'master.'—(*Aparārka*, p. 717.)

If the father has divided the property in equal shares, it is not open to the eldest son to object to it on the ground that 'a superior article' was not given to him ; similarly if the father divides the property into larger and smaller shares, it will not be open to the younger sons to object to it on the ground that smaller shares were allotted to them and a larger one to the eldest ; because in this matter what has been done by the father's wish must be regarded as lawful. The reason for this is supplied in the next sentence—'*as the father is all-powerful in regard to all,*' *i.e.*, in the matter of all kinds of partition made by the father, he is the final authority.—(*Smṛtichandrikā*, pp. 609-610.)

This verse sanctions the unequal division of the property acquired by the father himself.—(*Vivādaratnākara*, p. 468.)

As the fact of the father being 'all-powerful' is the reason given for the declaration herein made, the unequal division made by the father spoken of here must pertain to the father's self-acquired property ; as in regard to the

property of the grandfather, the father is not "all-powerful."—(*Dāyabhāga*, p. 58.)

This refers to other *Yugas*, not to the present one.—(*Vyavahāramayūkha*, p. 99.)

52. बृहस्पति] येनांशो यादृशो भुक्तस्तस्य तन्न विचालयेत् ॥

Where a certain portion has been in the possession of one, that shall not be taken away from him.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 716; *Vivādaratnākara*, p. 609; *Smṛtitattva* II, p. 182.]

NOTES

See also under II (1) above.

Where, in accordance with partition made by their own wish, a certain property has been in the possession of any one coparcener, that should remain with him and should not be taken away from him. This has been stressed with a view to making the partition permanent.—(*Vivādaratnākara*, p. 609.)

See II, 12, 279.

53. मनु 9. 209.] पैतृकं तु पिता द्रव्यमनवाप्तं (*v.l.*, प्यं) यदाप्नुयात् ।
also विष्णु] न तत् पुत्रैर्भजेत् सार्धमकामः स्वयमर्जितम् ॥

If the father recovers a lost ancestral property, he shall not, unless he so wishes, share it with his sons; *as it is his self-acquired property* [or, as also what is his self-acquired property].—(*Manu*, 9. 209; also *Viṣṇu.*) [Quoted in *Mitākṣarā*, p. 649; *Vivādaratnākara*, p. 461; *Vivādachintāmaṇi*, p. 196; *Parāsharamādhava*, p. 339; *Dāyabhāga*, p. 32; *Vīramitrodaya*, p. 574; *Smṛtitattva*, II, p. 165.]

NOTES

If, in addition to what he has inherited, the father recovers such ancestral property as had become lost, he shall not, unless he wishes it, share it with his sons, even after these latter have attained their majority.—(*Medhātithi.*)

'*Paitṛkam*,' what belonged to his father;—'*Anavāptam*,' which could not be recovered by the efforts of that father;—'*recovers*,' by great effort;—this he shall not share with his sons, unless he wishes it. The implication of this is that such property of the grandfather as has not been recovered by the father's efforts may be divided by the wish of the sons also.—(*Sarvajñanārāyaṇa.*)

The ancestral property which the grandfather, on account of his lack of strength, had failed to recover,—and which his son recovers by his efforts, is the self-acquired property of the latter,—and this he shall not share with his sons.—(*Kullūka.*)

If a lost ancestral property, not recovered by any of the ancestors, is recovered by the father by his own efforts,—that property the father shall not share with his sons, unless he wishes it. So also Yājñavalkya—'*Kramādabhyāgatam vittam, etc*' -All this refers to a case where the partition is forced upon the father by the sons. In cases where the father makes the partition of his own accord, he may make the division in any way he likes.—(*Rāghavānanda.*)

What could not be recovered by the other ancestors, and has been recovered by the father, this the father shall not share with the sons; as it would be his self-acquired property.—The implication of this is that when the grandfather's property is being divided, it must necessarily be divided equally among the father and his sons.—(*Nandana.*)

If an ancestral property which had been lost and not recovered by his father,—has been recovered by the father, it is his self-acquired property; and unless he wishes it, he shall not share it with his sons.—(*Rāmachandra.*)

The grandfather had acquired some property, -that property was taken away from him by someone,—and he failed to recover it; -if such property has been recovered by his son (*i.e.*, the father), then this being like his self-acquired property, the father shall not share it with his sons, unless he so wishes. This implies that the property of the grandfather the father must divide, if the sons so desire, even though he himself may not desire it.—(*Mitākṣarā*, pp. 649-650.)

'*Paitṛkam,*' ancestral;—'*Anavāpyam,*' which could not be recovered by his father. This property he shall not share with his sons, if he does not wish it, since it would be his self-acquired property.—(*Vivādaratnākara*, p. 461.)

If a property, which, though ancestral, had been taken away by a stranger, and has been recovered by the father,—and also what he has acquired for himself,—in both cases there can be partition of the property only if the father wishes it, not if he is not willing.—(*Vivādachintāmaṇi*, p. 196.)

If a property acquired by the grandfather had been taken away by someone, and has been recovered by the father, (then,—this being like his self-acquired property,—the father shall not share it with his sons, unless he wishes it. This implies that the partition of the grandfather's property does not depend upon the father's wish.—(*Parāsharamādhava*, p. 339.)

Inasmuch as the fact of its being his self-acquired property has been stated as the reason for 'not sharing the property unless he wishes it,'—it indicates that of the grandfather's property,—which has not been acquired by the father,—there can be a partition among the sons even if the father be unwilling. But all that this indicates is that when going to partition the property, that portion of the ancestral property which he has himself recovered the father shall not divide among the sons unless he wishes it, while the rest of it he shall divide, even though he does not wish it; it does not mean that the partition shall be made by the wish of the sons.—(*Dāyabhāga*, p. 32.)

The particle '*iva*' has to be supplied after '*arjitam*'; or it may be that the ancestral property that has been recovered by the father has become his self-acquired property; and this is a reason for the foregoing assertion.—'*Unless he wishes it*'—This shows that the partition of the grandfather's property can be made only by the wish of the father, not by the wish of the sons.—(*Vīramitrodaya*, p. 574.)

Such ancestral property as had been taken away by strangers and has been recovered by the father—shall not be partitioned, if the father does not wish it; treating it as his self-acquired property; the construction is—'*Svayamarjitam iti kṛtvā na vibhājet.*'—(*Smṛtitattva* II, p. 165.)

54. कात्यायन] स्वशक्त्याऽपहृतं नष्टं स्वयमाप्तं च यद् भवेत् ।
एतत् सर्वं पिता पुत्रैर्विभागे नैव दाप्यते ॥

If a property taken away or lost has been recovered by the father by his own strength, and also what is his self-acquired property,—all this the father cannot be made by the sons to give up at the partition.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 651; *Aparārka*, p. 728; *Parāsharamādhava*, p. 339.]

NOTES

Where an ancestral property, which had been taken away by strangers, has been recovered by the father through his own efforts,—as also the ancestral property that had been lost and recovered by the father,—and what the father himself may have acquired by learning, valour and other means,—all this the father cannot be made by the sons to give up at the partition.—(*Smṛtichandrikā*, p. 651.)

If the father has recovered a property that had been taken away or lost,—any such property the father cannot be made by the sons to give up.—(*Aparārka*, p. 728.)

The ancestral property that had been taken away by others and has been recovered by the father,—the ancestral property that had been lost and has been recovered by the father,—and the property that the father has himself acquired through learning, valour and other means,—all this the father cannot be made by the sons to give up.—(*Parāsharamādhava*, p. 339.)

55. अर्थशास्त्र II, 33.] प्राप्तव्यवहाराणां विभागः । अप्राप्तव्यवहाराणां देयविशुद्धं मातृबन्धुषु ग्रामवृद्धेषु वा स्थापयेयुः आव्यवहारप्रापणात् । प्रोषितस्य च ।

There shall be partition among those who have attained their majority ; of those who have not attained their majority, the shares, free from liabilities, shall be deposited with their mother's relatives, or with the elderly people of the village till the attainment of their majority. Similarly with the share of one who has gone abroad.—(*Arthashāstra* II, 33.)

56. व्यास] पैतृके न विभागार्हाः पुत्राः पितुरनिच्छतः ।

The sons are not entitled to a share in the paternal property, if the father is unwilling.—(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 650.]

NOTES

This clearly means that paternal property cannot be partitioned merely because the sons wish it.—(*Smṛtichandrikā*, p. 650.)

57. व्यास] भ्रातृणां जीवतोः पित्रोः सहवासो विधीयते ।
तदभावे विभक्तानां धर्मस्तेषां विवर्धते ॥

It is ordained that during the lifetime of the parents the brothers shall live together ; after their death, if they become divided, their righteousness prospers.—(*Vyāsa.*) [Quoted in *Smṛtichandrikā*, p. 606 ; *Dāyabhāga*, p. 60 ; *Vīramitrodaya*, p. 575 ; *Smṛtitattva* II, p. 170.]

NOTES

By enjoining co-residence, the text prohibits separation ; and what is forbidden is the partition of the property during the lifetime of the parents, *i.e.*, while either one of the parents is alive, partition wouldnot be right ; it should be done only after the death of both the parents.—(*Dāyabhāga*, p. 60.)

[The words of *Dāyabhāga* are reproduced in *Vīramitrodaya*, p. 576.]

'*Righteousness prospers*' for the divided brothers, in so far as religious rites can be performed only with the wealth that belongs to one's own self.—(*Smṛtitattva* II, p. 170.)

58. बृहस्पति] (A) द्रव्यं लेख्यं गृहं क्षेत्रं यस्य पैतामहं भवेत् ।
चिरकालप्रोषितो वा भागभागागतस्तु सः ॥

(B) गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः ।
तद्वंशस्यागतस्यांशः प्रदातव्यो न संशयः ॥

(C) तृतीयः पञ्चमश्चैव सप्तमश्चापि यो भवेत् ।
जन्मनामपरिज्ञाने लभेतांशं क्रमागतम् ॥

(A) If a man, having lived abroad for a long time, comes home, he shall receive his share of the debt, the documents, the house and the land that may have belonged to his grandfather.—(B) A man, having left his ancestral home, and gone over to another country,—if his descendant comes back to the ancestral place, he should certainly receive his share in the property.—(C) The person who is the third, fifth or seventh in descent (from the original owner) should receive his share in the ancestral property, if his birth and family name are known.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 712; *Vivādaratnākara*, p. 540; *Vyavahāramayūkha*, pp. 101-102.]

NOTES

See II, 281, and V, 6.

'*Bhagabhāk*,'—entitled to *half*.—'*Āgataḥ*,'—arrived after the partition.—(*Smṛtichandrikā*, p. 712.)

This refers to cases where the man has returned from residence in a remote and inaccessible country.—(*Vivādaratnākara*, p. 541.)

This refers to a man who has returned after a long residence in foreign lands.—(*Vyavahāramayūkha*, p. 102.)

59. नारद 13. 16.] व्याधितः कुपितश्चैव विषयासक्तमानसः [*v.l.*, चेतनः]।
अयथा [*v.l.*, अन्यथा] शास्त्रकारी च न विभागे
पिता प्रभुः ॥

If the father is diseased, or angered, or with mind addicted to sense-objects, or prone to act unlawfully, he cannot be the sole authority in the matter of partition.—(*Nārada*, 18. 16.) [Quoted in *Aparārka*, p. 718; *Mitākṣarā*, p. 619; *Smṛtichandrikā*, p. 605; *Parāsharamādhava*, p. 333; *Dāyabhāga*, p. 56; *Vīramitrodaya*, p. 552; *Smṛtitattva* II, p. 165; *Vyavahāramayūkha*, p. 96; *Madanapārijāta*, p. 647; *Dāyanirṇaya*, 16. 1—9.]

NOTES

'*Anyathāshāstrakārī*' (*v. l.*, '*ayathāshāstrakārī*')—prone to act against injunctions and prohibitions.—(*Aparārka*, p. 718.)

A partition made by the father can be accepted only if it is in accordance with the methods sanctioned by the scriptures; if it is not in accordance with them, then, even though made by the father, it becomes set aside. - (*Mitākṣarā*, p 619.)

In cases where, by reason of old age and other circumstances, the father is no longer master of himself, the division of the property shall be made according to the wish of the sons. -'*He cannot be the sole authority,*' 'but the son is the authority,'—this has to be added.—(*Smṛtichandrikā*, p. 605.)

This refers to cases where the father makes an unlawful division, either because his mind is perturbed, or because he is angry with some one of his sons, or because he is influenced by his love for the son of his favourite wife; —not to those where the division, though unequal, is in accordance with the methods sanctioned by the scriptures. - (*Dāyabhāga*, p. 56.)

This refers to cases where there are no such circumstances as have been mentioned in the scriptures as grounds for unequal division. - '*Viṣayāsakta-chitta,*' as evinced in an over-zealous affection for the son born of one's favourite wife.—(*Smṛtitattva* II, p. 165.)

If a division made by the father is not lawful, it should be set aside.—(*Madanapārijāta* II, p. 646.)

'*With mind addicted to sense-objects,*'—as evinced by partiality for the son of a beloved wife.—(*Dāyanirṇaya*, 16. 1—9.)

Section II [3 (a)]

VARIETIES OF SONS

General

60. देवल-शङ्खलिखित-यम] पिता पितामहश्चैव तथैव प्रपितामहः ।
उपासते सुतं जातं शकुन्ता इव पिप्पलम् ॥

The father, the grandfather and the great-grandfather welcome the son when born, just as birds welcome the fruit of the banyan-tree.—(*Devala-Shaṅkha-Likhita-Yama.*) [Quoted in *Dāyabhāga*, p. 63.]

Notes

The mention of the 'grandfather' indicates that the term '*putra*' includes the 'grandson' and 'great-grandson' also; and this implies that since all these offer the *shrāddha* to the three ancestors, they are all equally entitled to inherit their property.—(*Dāyabhāga*, p. 63.)

61. मनु 9. 138.] पुन्नाम्नो नरकाद् यस्मात् पितरं त्रायते सुतः ।
विष्णु 15. 43.] तस्मात् पुत्र इति प्रोक्तः स्वयमेव स्वयम्भुवा ॥

Because the son delivers his father from the hell called *Put*, therefore has he been called *Putra*, 'Deliverer from Put,' by the Self-existent One Himself.—(*Manu*, 9. 138; *Viṣṇu*, 15. 43.) [Quoted in *Vivādaratnākara*, p. 583; *Dāyabhāga*, p. 161.]

Notes

This is a commendatory supplement to the injunction of begetting children.—'*The hell called Put*' is the name given to the four kinds of elemental life on the Earth; and it is from this that the father is delivered by his son, as soon as he is born; which means that the next time that the father is born, it is in divine life.—(*Medhātithi.*)

62. बृहस्पति] पुन्नाम्नो नरकात् पुत्रः पितरं त्रायते यतः ।
मुखसन्दर्शनेनापि तदुत्पत्तौ यतेत सः ॥
पौत्रोऽथ पुत्रिकापुत्रः स्वर्गप्राप्तिकरावुभौ ।
रिक्थपिण्डप्रदानेन समौ सम्परिकीर्तितौ ॥

Inasmuch as the son delivers the father from the hell called *Put* by the mere sight of his face, the father should try his best to beget a son. The son's son and the son of the Appointed Daughter both lead one to heaven; in the matter of inheritance and the offering of the funeral cakes, both have been declared to be equal.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 584.]

63. हारीत] पुन्नामा निरयः प्रोक्तश्छिन्नतन्तुश्च नैरयः ।
तत्र वै त्रायते यस्मात् तस्मात् पुत्र इति स्मृतः ॥

A hell has been called by the name *Put*; it is a hell consisting of the cutting off of one's line; inasmuch as the son delivers one from this hell, he has been called *Putra.*—(*Hārīta.*) [Quoted in *Vivādaratnākara*, p. 584; *Dāyabhāga*, p. 161.]

64. मनु 9. 137.] पुत्रेण लोकान् जयति पौत्रेणानन्त्यमश्नुते ।
विष्णु 15. 45.] अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति विष्टपम् ॥
वसिष्ठ 13. 5.]
शङ्खलिखित
हारीत

Through the son one conquers the worlds; through the grandson, one attains immortality; and through the son's grandson, one obtains the regions of the Sun.—(*Manu*, 9.137; *Viṣṇu*, 15. 45; *Vasiṣṭha*, 13. 5; *Shaṅkha-Likhita*; *Hārīta.*) [Quoted in *Dāyabhāga*, p. 161; *Vivādaratnākara*, p. 585; *Dāyanirṇaya*, 3. 2-3.]

NOTES

'*Vradhna*' is *Sun.*—(*Vivādaratnākara*, p. 585.)

In the matter of Inheritance, the son comes first, then the grandson, then the great-grandson. But when a man (A) dies, leaving (1) a son, (2) a grandson, whose father has died, and (3) a great-grandson whose father and grandfather have died,—all these three have equal rights over the property left by (A); but if a grandson of (A) has his father living, that grandson's right over (A's) property is not equal to that A's living son.—(*Dāyanirṇaya*, 3. 1—5.)

65. शङ्खलिखित] पितॄणामनृणो जीवन् दृष्ट्वा पुत्रमुखं पिता ।
स्वर्गी स तेन जातेन तस्मिन् संन्यस्य तदृणम् ॥
अग्निहोत्रं त्रयो वेदा यज्ञाश्च शतदक्षिणाः ।
ज्येष्ठपुत्रप्रसूतस्य कलां नार्हन्ति षोडशीम् ॥

On seeing the face of the son, the father becomes free from the debt to his forefathers; as soon as the son is born, the father, having transferred that debt to him, becomes entitled to heaven. The Agnihotra, the three Vedas and Sacrifices at which hundreds are given away as the sacrificial fee,—all this does not equal the sixteenth part of the birth of the eldest son.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 584; *Dāyabhāga*, p. 161.]

66. मनु 9. 106.] ज्येष्ठेन जातमात्रेण पुत्री भवति मानवः ।
पितॄणामनृणश्चैव स तस्मात् सर्वमर्हति ॥

By the mere birth of the eldest son a man becomes "with son" and free from the debt to his forefathers; it is for this reason that he deserves to obtain the whole.—(*Manu*, 9. 106.) [Quoted in *Dāyabhāga*, p. 162.]

67. वसिष्ठ] ऋणमस्मिन् सन्नयति अमृतत्वं च विन्दति ।
पिता पुत्रस्य जातस्य पश्येच्चेज्जीवतो मुखम् ॥

If the father sees the face of the living son on his birth, he transfers his debts to him and obtains immortality.—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 584.]

68. याज्ञवल्क्य 2. 78.] लोकानन्त्यं दिवः प्राप्तिः पुत्रपौत्रप्रपौत्रकैः ॥

Imperishable regions and attainment of heaven follow from the birth of the son, the grandson and the great-grandson. (*Yājñavalkya*, 2. 78.) [Quoted in *Dāyabhāga*, p. 161; *Vivādaratnākara*, p. 585.]

69. मनु 9. 185-186.] न भ्रातरो न पितरः पुत्रा रिक्थहराः पितुः ।

. . . . .

त्रयाणामुदकं कार्यं त्रिषु पिण्डः प्रवर्तते ॥
चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते ॥

Sons alone shall inherit the father's property, not brothers or fathers ; . . . To these should water-libations be offered ; to these is the cake offered ; the fourth is the offerer of these (offerings) ; there can be no fifth.—(*Manu*, 9. 185-186.) [Quoted in *Smṛtichandrikā*, p. 667 ; *Dāyabhāga*, pp. 174, 208 ; *Vīramitrodaya*, p. 641.]

NOTES

See III, 114.

70. शङ्खलिखित] ब्राह्मणस्तु सवर्णायाः पाणिं गृह्णीयात् । तस्यां पितामहानां तनवोऽनुसूयन्ते । पुत्रोपचारेणात्मानं सम्मन्त्रयेत् । एवं ह्याह अङ्गादङ्गादित्यादि ।

The Brāhmaṇa shall marry a girl of the same caste ; in her are reborn the bodies of his forefathers ; he should address to himself in the form of the son, the mantra '*Aṅgādaṅgāt, etc.*'—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 554.]

ALL KINDS OF SONS ENUMERATED COLLECTIVELY

71. याज्ञवल्क्य 2. 128—132.] औरसो धर्मपत्नीजः—तत्समः पुत्रिकासुतः ।
क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा ॥
गृहे प्रच्छन्न उत्पन्नो गूढजस्तु ततः स्मृतः ।
कानीनः कन्यकाजातो मातामहसुतः स्मृतः ॥
अक्षतायां क्षतायां वा जातः पौनर्भवः सुतः ।
दद्यान्माता पिता वा यं स पुत्रो दत्तको भवेत् ॥
(See also Ch. II, 130.)
क्रीतश्च ताभ्यां विक्रीतः—कृत्रिमः स्यात् स्वयं कृतः ।
दत्तात्मा तु स्वयन्दत्तो—गर्भे विन्नः सहोढजः ॥
उत्सृष्टो गृह्यते यस्तु सोऽपविद्धो भवेत्सुतः ।
पिण्डदोंऽशहरश्चैषां पूर्वाभावे परः परः ॥

(1) One born of the lawful wife is the *Aurasa*, "Body-born," son ;—(2) equal to the same is the *Putrikāputra*, "Son of the Appointed Daughter" ;—(3) that born in one's own "Soil," through a *Sagotra* or another person is the *Kṣetraja*, "Soil-born" son ;—(4) that born secretly in the house is the *Gūḍhaja*, "secretly born" son ;—(5) that born of a maiden is the *Kānīna*, "maiden-born," son, who belongs to his mother's father ;—(6) that born from a remarried widow,

either a virgin or otherwise, is the *Paunarbhava*, "born of a remarried woman";—(7) one whom the father or mother has given away is the *Dattaka*, "adopted" son;—(8) that sold by his parents is the *Krīta*, "Purchased" son;—(9) that appointed by oneself is the *Kṛtrima*, "Appointed" son;—(10) one who has offered himself is the *Svayandatta*, "self-offered" son;—(11) one obtained in the womb is the *Sahoḍha*, "obtained with the wife";—(12) one who, being abandoned (by the parents), has been taken up is the *Apaviddha*, "Cast off" son.—From among these the funeral cake shall be offered and the property inherited by each succeeding one only in the absence of the preceding one.—(*Yājñavalkya*, 2. 128–132.) [Quoted in *Vivādachintāmaṇi*, p. 232; *Vibhāgasāra*, 14 1–8.]

NOTES

See Chap. II, 130.

Each of these definitions shall be dealt with separately in the following sections.

Manu (9. 160) has the '*Shaudra*' (son born of a Shūdra wife) as the twelfth. He does not include the *Putrikāputra* among these 12; he takes him separately as the *thirteenth*, standing by himself. Medhātithi (on 9. 166) says that the *Putrikāputra* has not been named among these twelve, because the useful purpose served by him is the same as that served by the Legitimate Son, which fact makes him 'equal' to this latter, as declared by Yājñavalkya (2. 125).

'*Dharmapatnī*' is the lawfully wedded wife belonging to the same caste as oneself; the son born of such a wife is called 'legitimate'; this son belongs to the father and the mother; so also does the son of the Appointed Daughter;—the *Kṣetraja* son belongs to the 'owner of the soil' (the husband of the woman); if the 'owner of the soil' so wishes it, this son may belong to the man who supplied the seed; or to both, if both wish it so;—the 'secretly born' son belongs to the mother's caste, and belongs to the person who marries her;—the 'maiden-born' son belongs to the man who marries the maiden, if her father has other children; if the father of the maiden has no other children, then the son belongs to him;—the 'son of the remarried woman,' *i.e.*, the son born to a woman after her husband's death, from a second man who marries her, belongs to this latter man who has married the woman;—the 'adopted' son belongs to the adopter;—the 'purchased' son is one who has been bought by the payment of a price, and he belongs to the purchaser;—the 'appointed' son, known as the '*Kartā-putra*,' belongs to the person who appoints him;—the 'self-offered' son is one who, on being given up by his parents, has offered himself as the son of another person;—the *Sahoḍha* son is the son born of a girl who has conceived before the marriage; and he belongs to the man who has married the pregnant girl;—the 'cast-off' son is one who, on being cast off by his parents, has been picked up by another person; and he belongs to this other person.—(*Vibhāgasāra*, 14. 2 1.)

72. अर्थशास्त्र II, p. 40.] (१) स्वयं जातः कृतक्रियायाम् औरसः। (२) तेन तुल्यः पुत्रिकापुत्रः। (३) सगोत्रेण वाऽन्यगोत्रेण वा नियुक्तेन क्षेत्रजातः क्षेत्रजः पुत्रः। (४) तत्सधर्मा बन्धूनां गृहे गूढजातस्तु गूढजः। (५) बन्धुनोत्सृष्टः अपविद्धः संस्कर्तुः पुत्रः। (६) कन्यागर्भः कानीनः। (७) सगर्भोढायाः सहोढः। (८) पुनर्भूतायाः पौनर्भवः। (९) तत्सधर्मा मातापितृभ्यामद्भिर्दत्तो दत्तः। (१०) स्वयं बन्धुभिर्वा पुत्रभावोपगतः उपगतः। (११) पुत्रत्वेऽधिकृतः कृतकः। (१२) परिक्रीतः क्रीतः॥

(1) One born from one's married wife is the *Body-born* ;—(2) equal to him is the *Son of the Appointed Daughter* ;—(3) one born in one's *soil*, through an authorised person belonging to the same or another *gotra* is the *Soil-born* ;—(4) similar in character to him is the *Secretly-born* who has been born in the house of her relations in a secret manner ;—(5) one who has been abandoned by his relations is the *Cast off* son, who belongs to the person who performs his sacramental rites ;—(6) one born of a maiden is the *Maiden-born* ;—(7) one born of a woman who has been married while pregnant is the son *Obtained with the Wife* ;—(8) one born of a woman remarried is the *Son of a Remarried Woman* ;—(9) equal in character to him is one who has been given away with water by his parents, and is called the *Adopted Son* ;—(10) one who has offered himself, or has been offered by his relatives, is the *Self-offered* son ;—(11) one appointed to the position of the son is the *Appointed Son* ;—(12) one who has been purchased is the *Bought Son*.—(*Arthashāstra* II, p. 40.)

(1) THE BODY-BORN SON

73. याज्ञवल्क्य 2. 128.] औरसो धर्मपत्नीजः।

That born of one's own lawfully married wife is the *Body-born* or Legitimate son.—(*Yājñavalkya*, 2. 128.) [Quoted in *Vivādaratnākara*, p. 554 ; *Madanapārijāta*, p. 650 ; *Vīramitrodaya*, p. 596.]

NOTES

'*Dharmapatnī*' is a woman of the same caste as oneself married according to the *Brāhma* or some other form of marriage ;—a son begotten on such a wife by one's own self is the 'Body-born' son.—(*Vishvarūpa*.)

The son born of the lawfully married wife should be regarded as the 'Body-born' son. '*Dharmapatnī*' is that wife in company with whom one performs his religious acts. The term '*patnī*' itself connotes the 'associate at religious performances'; but on account of the presence of the term '*dharma*,' the term '*patnī*' is to be taken in the sense of 'wife in general'; and the term '*dharmapatnī*' serves to exclude the Shūdra wife, who cannot be associated with a twice-born person at religious performances; for this reason the son born of that wife would not be a 'Body-born' son; whom, on this account, Manu (9. 160) has mentioned as a 'substitute for a son,' and 'not entitled to inheritance'; all that he gets is 'a tenth part,' by way of reward for devoted service.—The 'Body-born' son of a twice-born man would thus be one born of a twice-born woman who has been married by him in accordance with the law. The name '*aurasa*' is meant to be literal; its etymological meaning being 'one born out of one's heart.' Thus the distinctive characteristic of the Body-born son is that he is *begotten by the father himself*.—(*Aparārka*.)

The son 'born of one's heart' is the Body-born son; he is born of the legally married wife; the wife of the same caste married in one of the legal forms of marriage is the 'legally married wife,' and the son born of such a wife is the Body-born (legitimate), the most important, son. [Wives married in the inverse order of the castes are not 'legally married,' hence the sons born of such wives become excluded.—*Bālambhaṭṭi*.]—[*Mitākṣarā*.]

'*Dharmapatnī*' is a wife of the same caste married in accordance with law; the son born of such a wife from the person who has married her is the 'Body-born' or Legitimate son. For men of the three castes, Brāhmaṇa, Kṣattriya and Vaishya—a 'twice-born' woman would be regarded as 'of the same caste'; otherwise (if it were insisted upon that for the Brāhmaṇa a woman of the Brāhmaṇa caste alone can be regarded as 'of the same caste'), the son that would be born to a Brāhmaṇa of a woman of the *Kṣattriya* or *Vaishya* caste who has been married by him, would be excluded from the 'twelve kinds of sons'; —so says the *Pārijāta*.—This son is called '*aurasa*,' 'body-born,' because he is 'born out of the heart' of the husband.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

'*Dharmapatnī*' is a woman of the same caste married in a legal form of marriage;—the son born of such a wife is the '*aurasa*,' the principal kind of son. Thus (*a*) the son of a wife of the same caste married in '*Āsura*' and other (deprecated) forms of marriage, (*b*) the son born to a Brāhmaṇa from a wife married in the regular order of castes, *i.e.*, from a *Kṣattriya*, a *Vaishya* or a *Shūdra* wife,—such sons of the mixed caste, being known as (1) '*Mūrdhāvasikta*,' (2) '*Ambaṣṭha*,' and (3) '*Niṣāda*,' or '*Pārashava*' ' respectively;—(*c*) the son born to a Kṣattriya, of a Vaishya, or Shūdra wife—known as '*Mahiṣya*' and '*Ugra*' respectively;—and (*d*) the son born to a Vaishya of a Shūdra wife—known as '*Karaṇa*';—all these would be '*body-born*' or 'legitimate' sons.—(*Madanapārijāta*, p. 651.)

The *Mitākṣarā* has supplied the explanation.—"The '*dharmapatnī*' is the wife of the same caste married in one of the legal forms of marriage; and the son born of such a wife is the legitimate son."—But this should not be accepted as the correct view; because the *Mitākṣarā* has itself included among

'legitimate sons,' all those sons of the mixed castes '*Mūrdhbhiṣakta*' and the rest who are born of wives married in the regular order of the castes.—So that the explanation provided by the *Mitākṣarā* (which restricts the term 'legitimate' to the son of a wife of the *same caste* as the father) is inconsistent with this; because the said sons of the mixed castes would not be born of wives of the same caste as the father. Then again, if the sons born to the Brāhmaṇa (Kṣattriya and Vaishya) of wives married in one of those forms of marriage that have been legally sanctioned for them were to be regarded as 'non-legitimate' (*Anaurasa,* on the ground of their mothers not belonging to the *same caste* as the father),—the effect of this would be that even in the presence of these sons, the property of their father would go to others;—for these reasons, the mention in the *Mitākṣarā* of the qualification '*of the same caste*' should be taken as indicating an additional *excellence* or *superiority*; and the actual definition of the *aurasa* son is simply 'one born of a legally married wife,' as this serves the necessary purpose of excluding the *Kṣetraja* and other kinds of sons.—(*Vīramitrodaya*, p. 596.)

74. मनु 9. 166.] स्वे क्षेत्रे संस्कृतायां तु [*v.l.*, संस्कृतायां तु भार्यायां]
स्वयमुत्पादयेद्धि यम् ।
तमौरसं विजानीयात् पुत्रं प्रथमकल्पितम् ॥

Him whom a man himself begets in his own sanctified soil,—one shall know as the *Body-born* (Legitimate) son, declared to be the first in order.—(*Manu*, 9. 166.) [Quoted in *Vivādaratnākara*, p. 553; *Vīramitrodaya*, p. 597.]

NOTES

The meaning is that the 'Legitimate' son is one born from the woman '*sanctified*'—*married*—*by the man himself*; not necessarily *belonging to the same caste.* If '*sva*' stood for 'one of the same caste,' then the son of the Brāhmaṇa woman married by any Brāhmaṇa would have to be regarded as the legitimate son of every Brāhmaṇa. With our explanation the definition includes also the son born to a Brāhmaṇa from his married *Kṣattriya* wife.—Others have taken the term '*prathamakalpitam*' as meaning 'of the principal kind' and as forming part of the definition, and have urged that the son of the *Kṣattriya* wife, not being a 'legitimate son' in the fuller sense, is not meant to be included in the definition.—Under this explanation, however, if the son begotten on the *married Kṣattriya* wife were not to be a 'Legitimate' son in the fuller sense, he would be as good or as bad as the son of an *unmarried* wife (which is absurd).—As a matter of fact, no useful purpose is served by these definitions; as a rule, in actual usage, whenever a child is born to a man, he is known as his 'son'; and the progenitor is known as the 'father'; the definitions that are provided of the various kinds of sons, only serve the purpose of indicating the peculiar characteristics of certain kinds of 'sons.'—As a matter of fact, the mere fact of a child being born of a man does not make

him his 'son'; if the mere fact of a child born of a man were to make that child his son, then there would be no difference in the 'son-ship' of the 'Legitimate' son and that of the other kinds of 'sons,' the *Paunarbhava* and the rest. Much importance cannot be attached to mere usage in this case.— Thus then, notwithstanding ordinary usage, the actual application of the name 'son' should be determined on the basis of scriptural texts, which lay down the various ways in which a 'son' may be begotten; and it is only the significance of the names of these sons that may be learnt from ordinary usage.— The 'body-born' or 'Legitimate' son has been regarded as the '*first in order*' because of all the sons it is this son that is in a position to confer the greatest benefits upon his father; and the other sons have been called 'substitutes' (*Manu*, 9. 180) on the ground of the lessening degrees of benefits conferred by them upon the father; and what is meant is that it is the legitimate son that is most commendable.—(*Medhātithi*).

'*Svakṣetrā*'—In the soil of a woman of the same caste as himself;—'*saṃskṛtāyām*,' married to himself;—'*prathamakalpitam*,' of the primary kind.—(*Sarvajñanārāyaṇa.*)

The son that the man himself begets on his wife, married as a virgin, is to be known as the principal kind of son, the 'Legitimate.' Inasmuch as Baudhāyana has declared the 'Legitimate son' to be one begotten on the wife *of the same caste*, we have to regard, as 'legitimate,' only that son who may be born of a wife of the same caste.—(*Kullūka.*)

Being born of a woman married to himself, he is called '*aurasa*,' because born of the contact of his '*uras*' (chest, heart). In view of Baudhāyana's declaration only the son born of a wife of the same caste can be regarded as '*aurasa*'; but the term 'same caste' (in Baudhāyana's text) must be taken as standing for such 'castes' as 'twice-born' and the like (and not the specific castes Brāhmaṇa and the rest); as otherwise, the son of a *Brāhmaṇa* father and a *Kṣattriya* or *Vaishya* mother being not included under the 'Legitimate' son, could not be regarded as a 'son' at all. The only difference is that in the case of the son born of a wife of the same caste as the father, the 'legitimacy' '*aurasatva*,' is primary, and in the other cases, secondary.—'*Prathamakalpitam*,' entitled to everything.—(*Rāghavānanda.*)

'*Prathamakalpitam*,'—regarded as the principal kind.—(*Nandana.*)

'*Saṃskṛtāyām*,' married;—if one begets the son himself,—and the son thus born of a mother of the twice-born castes, is to be regarded as 'legitimate,' the principal kind of son.—(*Rāmachandra.*)

75. आपस्तम्ब] सवर्णामपूर्वां शास्त्रविहितां यथर्तु गच्छतः पुत्राः ।
तेषां कर्मभिः सम्बन्धः दायेनाव्यतिक्रमश्च ।

Sons are born to a man who approaches during the right periods a wife who belongs to the same caste as himself, who has been married before, and who has been married to him in accordance with the scriptures. These sons are associated with the religious acts (of the father) and are never debarred

from inheriting his property.—(*Āpastamba.*) [Quoted in *Vivādaratnākara*, p. 554.]

NOTES

'*Apūrvām*,' who has had no previous husband, *i.e.*, one who had not been even betrothed to another man,—says the author of the *Prakāsha*.—'*Shāstravihitām*' who has been married by the marriage rites prescribed in the scriptures.—'*Karmabhiḥ*,'—the performance of the *Agnihotra* and such rites.—'*Dāyēnavyatikramaḥ*—*i.e.*, it is only such sons who are not to be kept aloof from inheriting the entire property.—(*Vivādaratnākara*, p. 554.)

76. बौधायन] सवर्णायां संस्कृतायां स्वयमुत्पादितमौरसं विद्यात् ।

That son is to be regarded as *Legitimate* who has been begotten by the man himself on a married wife of the same caste.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 554.]

NOTES

By '*same caste*' here is meant the 'twice-born' for the 'twice-born,' and the '*Shūdra*' for the '*Shūdra*'—and not the '*Brāhmaṇa*' for the *Brāhmaṇa*, the '*Kṣattriya*' for the '*Kṣattriya*,' and the '*Vaishya*' for the '*Vaishya*';—otherwise the sons born to the *Brāhmaṇa* father from his married wife of the *Kṣattriya* and other castes would not be included under any of the twelve sons.—So says the *Pārijāta*.—(*Vivādaratnākara*, p. 554.)

77. देवल] संस्कृतायां तु भार्यायां स्वयमुत्पादितो हि यः ।
औरसो नाम पुत्रः स प्रधानं पितृवंशधृक् ॥

That son which a man himself begets on a married wife is the son named *Legitimate*,—the principal upholder of the father's dynasty.—(*Devala.*) [Quoted in *Vivādaratnākara*, p. 554; *Vīramitrodaya*, p. 597.]

78. वसिष्ठ] स्वयमुत्पादितः स्वे क्षेत्रे संस्कृते औरसः प्रथमः ।

The son begotten by the man himself in his own sanctified soil, is the first, the *Legitimate*, son.—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 553; *Aparārka*, p. 735.]

NOTES

'*Prathama*,' the principal; hence it is this son that forms the primary denotation of the term '*putra*,' 'son'; the *Kṣetraja* and the rest are only secondary.—(*Aparārka.*)

79. विष्णु] स्वे क्षेत्रे स्वयमुत्पादितः प्रथमः ।

The son begotten by oneself on his own soil is the first.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 553.]

(2) SON OF THE APPOINTED DAUGHTER

80. याज्ञवल्क्य 2. 128.] तत्समः पुत्रिकासुतः ।

Equal to the Legitimate son is the Putrikāputra, the Son of the Appointed Daughter.—(*Yājñavalkya*, 2. 128.) [Quoted in *Vivādaratnākara*, p. 560; *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

NOTES

The mention of 'equality' is meant to indicate superiority to the '*kṣetraja*' and other sons. What the exact nature of the '*putrikā*,' Appointed Daughter, is should be learnt from another *Smṛti*.—(*Vishvarūpa.*)

'*Tatsamaḥ*,' equal to the '*Aurasa*' is the '*Putrikāsuta*,' 'son of the Appointed Daughter,', *i.e.*, '*son in the shape of the Appointed Daughter*' ('of' denoting *apposition*); inasmuch as such a daughter would fulfil all the conditions of the 'Legitimate' son, except in the point of *masculinity*, she is 'equal to the legitimate son'; This view of the daughter herself being '*Putrikāputra*' is supported by Bṛhaspati.—'*Putrāstrayodasha proktā. . . . . . teṣāmaurasaḥ putrikā tathā.*—The son born to the 'appointed daughter' is also spoken of as the '*Putrikāputra*,' 'son of the Appointed Daughter ('of' in this case having the possessive signification); this view has the support of Vasiṣṭha—'*abhrātṛkām, etc.*'—(*Aparārka.*)

'*Tatsamaḥ putrikāsutaḥ*',—equal to the Legitimate Son is the son that is born to the Appointed Daughter, and is, on that account, 'equal to the Legitimate Son'; this is in accordance with Vasiṣṭha (17. 17) '*Abhrātrikām, etc.*'—Or the term '*Putrikāsuta*' may be taken to mean 'the son in the shape of the Appointed Daughter herself'; she also would be 'equal to' (not exactly the same as) 'the Legitimate *son*'; because the Daughter's body would be constituted by more parts from the mother's body than those from the father's; this also has the support of Vasiṣṭha (17. 15).—'The third is the *Putrikā* herself,' which means that 'the Appointed Daughter herself is the third son.'—(*Mitākṣarā.*)

The '*Putrikā*' is the daughter who has been given in marriage on the understanding that 'the son born of this girl shall be my son,' as declared by *Vasiṣṭha* (17. 17); the son born to such a daughter would be the '*putrikāsuta*,' 'son of the Appointed Daughter,;—this is the definition of this kind of son that is obtained from the *name* itself. This son is 'equal to the Legitimate Son';—*i.e.*, he shall inherit the property of his mother's father and offer the funeral cake to him.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

Equal to the 'Legitimate Son' is the '*Putrikāsuta,*' 'Son of the Appointed Daughter,' w hich may be taken either as 'son born to the Appointed Daughter,' or 'the son in the shape of the Appointed Daughter herself.'—(*Madanapārijāta*, p. 651.)

'*Putrikāsuta,*' 'the son born to the Appointed Daughter' is equal to the 'Legitimate son.' This has been declared by Vasiṣṭha—'*Abhrātṛkām, etc.*'—and by Manu—'*Aputronena vidhinā, etc.*'—The sense of these passages is that the son born to the daughter given in marriage on the express understanding that 'the son born to her shall be my son' belongs to the father of that girl. That a daughter can be an 'Appointed Daughter' even without such express understanding has been declared in the Mitākṣarā on *Āchārādhyāya* (page 33), where, in explaining the significance of the qualification, 'one who has a brother,' as pertaining to the *marriageable girl*, it is pointed out that this qualification should be insisted upon with a view to avoid the risk of her being an 'Appointed Daughter,'—as a daughter can be 'appointed' even without express understanding. It is for this reason that Vasiṣṭha has declared that "according to some people, the daughter becomes *appointed* by the mere *intention* of her father." The *Brahmapurāṇa* also declares the '*Putrikā,*' 'Appointed Daughter,' to be 'one whom the sonless father has made his son, either *in his own mind*, or before the King, the Fires and the Relatives.'—Or the term '*Putrikāsuta*' may mean 'the son in the shape of the Appointed Daughter herself,' *i.e.*, *the daughter who is in the position of the son.* This daughter, though 'born of the body' of the father, is only '*equal to* the legitimate son' (and not exactly *the same* as that son),—because she is *a girl*, say we;—but because her body is made up of a larger number of particles from the mother's body than from the father's, says the *Mitākṣarā*. This view of the '*Putrikāsuta*' (as 'son in the shape of the Appointed Daughter') has the support of Vasiṣṭha who says that 'the third is the Appointed Daughter herself.'—(*Vīramitrodaya*, pp. 598-599.)

Commenting on Manu, 9. 136—'Either appointed or not appointed, if a daughter bears a son to a husband of equal status,—through that son, does the maternal grandfather become endowed with a "son's son."'—*Dāyabhāga* (pp. 144-145) and *Vīramitrodaya* (pp. 614-615) remark that from this it is clear that the 'Appointed Daughter' herself is the 'son' to her father; and thus alone could her son be a 'son's son' to him.

81. वसिष्ठ 17. 17.] अभ्रातृकां प्रदास्यामि तुभ्यं कन्यामलङ्कृताम् ।
अस्यां यो जायते पुत्रः स मे पुत्रो भवेदिति ॥

I am giving you this brotherless girl duly adorned; the son born in her shall be my son.—(*Vasiṣṭha*, 17. 17.) [Quoted in *Dāyabhāga*, p. 145; *Vyavahāramayūkha*, p. 107; *Vivādaratnākara*, p. 562; *Vīramitrodaya*, p. 598; *Mitākṣarā*, p. 690; *Aparārka*, p. 735.]

NOTES

This text asserts that it is only the *son* of the Appointed Daughter that is '*Putrikāputra*'; and this might give rise to the notion that in view of the several texts both the 'appointed daughter' and her son shall be sons (to the girl's father). But this would not be right, as firstly it would be inconsistent with Manu's words; and secondly because the 'sonship' of the daughter could be only secondary, based upon her offering the funeral cakes to her father; and it is only through her son that she can make this offering.—(*Dāyabhāga*, p. 145.)

This text mentions the first kind of '*Putrikāputra*'; the second kind being mentioned by Vasiṣṭha in a previous *sūtra* (17. 15)—'*Tṛtīyaḥ putrikaiva*'.—(*Vyavahāra-Mayukha*, p. 107.)

This shows that the son of the appointed daughter is also spoken of as the 'son' (of his mother's father).—(*Aparārka*, p. 735.)

The son of the appointed daughter is what is meant by the term *putrikāsutaḥ*.'—(*Mitākṣarā*, p. 690; also *Viramitrodaya*, p. 598.)

82. ऋग्वेद 3. 31. 1-2.] (A) शासद्वह्निर्दुहितुर्नप्त्यंगाद्विद्वाँ ऋतस्य दीधितिं सपर्यन् ।
पिता यत्र दुहितुः सेकमृञ्जन्त्संशग्म्येन मनसा दधन्वे ॥
(B) न जामये तान्वो रिक्थमारैक्चकार गर्भं सवितुर्निधानम् ।
यदी मातरो जनयन्त वह्निमन्यः कर्ता सुकृतोरन्य ऋन्धन् ॥

(A) Wise, teaching, following the thought of order, the sonless gained a grandson from his daughter.
Fain, as a sire, to his child prolific, he sped to meet her with an eager spirit.

(B) The son left not his portion to the sister, he made a home to hold her who should gain it.
What time his parents gave the priest his being, of the good pair, one acted, one promoted.—(*Ṛgveda*, 3. 31. 1-2.)

NOTES

(A) The daughter inherits the property of the father if he has no son and if she has been 'Appointed Daughter'; and the reason for this lies in the fact that the son born to her propagates the race of the girl's father. '*Vahni*' is the sonless father who transfers his daughter to another family by marriage;—'*shāsat*' pronouncing the words 'I am giving you this adorned brotherless daughter, the son born to her shall be my son';—'*duhituḥ*,' from the said 'Appointed Daughter';—'*naptyam*,' grandson;—'*gāt*,' gained.—

(B) The meaning of the second verse is that the daughter who has a brother does not inherit the father's property; but he performs her marriage, as laid down by Yājñavalkya in the text '*asamskṛtāstu samskāryāḥ, etc.*' (2. 124).—(*Sāyaṇabhāṣya.*)

83. ऋग्वेद 1. 124. 7.] अभ्रातेव पुंस एति ।

Uṣas goes towards the Sun, just as the brotherless girl goes to her father (for offering Shrāddha).—(*Ṛgveda*, 1. 124. 7.)

84. वसिष्ठ 17. 15.] तृतीयः पुत्रिका विज्ञायते । अभ्रातृका हि पुंसः पितॄनभ्येति प्रतीचीनं गच्छति पुत्रत्वम् ।

The Appointed Daughter is known as the third (son);—having no brother, she reverts to the male ancestors; her sonship turns back.—(*Vasiṣṭha*, 17. 15.) [Quoted in *Mitākṣarā*, p. 690; *Vivādaratnākara*, p. 559.]

NOTES

'*Tṛtīyaḥ*,'—*i.e.*, the Appointed Daughter should be known as 'the third' son.—(*Mitākṣarā*, p. 690.)

The 'third' son is the Appointed Daughter; she is equal to the 'Legitimate son,' because she serves the same purpose as that son.—'*Pratīchīnam gachchhati*,'—*i.e.*, the 'sonship,' being reversed turns back towards the father's family.—(*Vivādaratnākara*, p. 559.)

85. गौतम] पितोत्सृजेत् पुत्रिकामनपत्यः—अग्निं प्रजापतिं चेष्ट्वाऽस्मदर्थमपत्यमिति संवाद्य । अभिसन्धिमात्रात् पुत्रिकेत्येकेषाम् ।

The father, having no son, having made offerings to Agni and Prajāpati, shall give away the Appointed Daughter, after having made the agreement that the son (born of her) would be his.—According to some people, the daughter becomes *Appointed* by mere intention.—(*Gautama.*) [Quoted in *Aparārka*, p. 736; *Vivādaratnākara*, p. 562; *Vīramitrodaya*, p. 598.]

NOTES

'*Made offerings, etc.*'—*i.e.*, having performed the *Āgneyī* and the *Prājāpatya* sacrifices; even in the single Smārta Household Fire; or in the absence of this also, only worshipping Agni and Prajāpati;—so says Harihara.—'*Saṃvādya,*' having entered into an express understanding;—'*Abhisandhimātrāt,*'—this only reiterates the previous injunction.—(*Vivādaratnākara,* p. 562.)

86. देवल] तत्तुल्यः पुत्रिकापुत्रो दायादः सोऽथवा भवेत् ।
पितुर्मातामहस्यापि निरपत्यस्य पुत्रवत् ।

Equal to the Legitimate Son is the son of the Appointed Daughter; he would be the heir to his father, as also to his mother's sonless father, to whom he would be like a son.—(*Devala.*) [Quoted in *Vivādaratnākara,* p. 560.)

87. बौधायन] अभ्युपगम्य दुहितरि जातं पुत्रिकापुत्रमन्यं दौहित्रं (विद्यात्)।

That grandson, who is born of a daughter after the express understanding, is another son, the *Son of the Appointed Daughter.*—(*Baudhāyana.*) [Quoted in *Vivādaratnākara,* p. 560.]

NOTES

'*Abhyupagamya,*'—after the express understanding that 'the son born of her shall be my son';—'*dauhitram,*' such a daughter's son, grandson,—should be known as the son styled '*Putrikāputra*';—'*anyam,*' *i.e.,* other than the 'Legitimate son.'—The *Kalpataru* reads '*asyām,*' which makes the sentence more easily comprehensible.—(*Vivādaratnākara,* p. 560.)

88. विष्णु] यस्त्वस्याः पुत्रो स मे भवेत् ।

The son of this girl shall belong to me.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara,* p. 562.)

NOTES

The brotherless girl who is given away by the father in marriage by the process of 'appointing'—with this formula—is the '*Putrikā,*' the Appointed Daughter.—(*Vivādaratnākara,* p. 562.)

89. मनु 9. 127.] अपुत्रोऽनेन विधिना सुतां कुर्वीत पुत्रिकाम् ।
यदपत्यं भवेदस्यां तन्मम स्यात् स्व (*v.l.*, सु) धाकरम् ॥

He who has no son may make his daughter an *Appointed Daughter* with the following words—"The child that may be born of her shall be the performer of my funeral rites."—(*Manu*, 9. 127.) [Quoted in *Vivādaratnākara*, p. 561; *Dāyabhāga*, p. 144; *Vīramitrodaya*, p. 598.]

NOTES

The term '*svadhā*' stands for the *shrāddha* and other after-death rites.—It is not necessary that the words herein stated should be the exact formula that is pronounced at the 'appointing.' From what Gautama has said it is clear that the daughter becomes 'appointed' even without the pronouncement of any definite formula. But with a view to guard against the contingency of the son-in-law raising difficulties in the surrendering of the son when born, the present text has laid down that the father may "*make his daughter an Appointed Daughter.*"—(*Medhātithi.*)

'*Yadapatyam, etc.*'—The construction is that 'he should give away the daughter after having pronounced these words',—the verb '*dadyāt*' being supplied.—'*Svadhā*' stands for the *shrāddha* and other rites which it is the duty of the son to perform.—(*Sarvajñanārāyaṇa.*)

If a man has no son, he shall 'appoint' the daughter by making an explicit agreement with his son-in-law at the time of marriage, in the words—'If a son should be born to her he shall perform my *shrāddha* and other after-death rites.'—(*Kullūka.*)

The Appointed Daughter becomes entitled to inherit her father's property, only through the son that may be born to her.—'*Svadhākaram*,' one who offers the funeral cake and other things.—In connection with the 'son of the Appointed Daughter,' there is a peculiarity in regard to the *Aṣṭakāshrāddha.*—(*Rāghavānanda.*)

'*Anena vidhinā*,'—in the following form of agreement.—'*Putrikām*,'—the '*kan*' affix denoting similarity, the term '*putrikā*' means 'one who is as good as a son.'—'*Svadhākaram*,' one who makes offerings of water, funeral cakes and other things.—The particle '*iti*' should be supplied at the end.—(*Nandana.*)

'*Svadhākāram*,'—performer of the *shrāddha* and other rites.—(*Vivādaratnākara*, p. 562.)

The 'Appointed Daughter' is the offerer of the funeral cake only through her son.—(*Dāyabhāga*, p. 144.)

What is meant is that the 'son of the Appointed Daughter' belongs to the daughter's father only if she has been given away on that express understanding.—But from the injunction that one should marry a girl *with a brother*, it appears that the same is possible also when there has been no such express understanding.—(*Vīramitrodaya*, p. 598.)

90. ब्रह्मपुराण] अपुत्रेण तु या कन्या मनसा पुत्रवत् कृता ।
राजाग्निबान्धवेभ्यश्च समक्षं वाऽथ कुत्रचित् ॥
प्रागगर्भमथवा शुल्कमुक्ता दत्ता वराय या ।
मृते पितरि वा दत्ता सा विज्ञेया तु पुत्रिका ॥
पित्र्याद्‌ंशात् समं भागं लभते तादृशी सुता ॥

The daughter who has been *appointed like a son* by her father,—either (*a*) in his own mind,—or (*b*) in the presence of the king, the fire and the relations,—or (*c*) one who has been given to the bridegroom with a fee and a stipulation,—or (*d*) one who is given away on the death of her father,—is to be regarded as the Appointed Daughter. Such a daughter obtains an equal share in her father's property.—(*Brahmapurāṇa.*) [Quoted in *Vivādaratnākara*, p. 563 ; *Vīramitrodaya*, p. 598.]

91. बृहस्पति] अग्निं प्रजापतिं चेष्ट्वा क्रियते गौतमोऽब्रवत् ।
अन्ये त्वाहुरपुत्रस्य चिन्तिता पुत्रिका भवेत् ॥

Gautama has said that [the 'appointment' of the daughter is made] after offering sacrifices to Agni and to Prajāpati ; others however have held that by the mere intention of the sonless father, the daughter becomes an "Appointed Daughter."—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 562.]

NOTES

'*Chintitā*'—being thought of as an 'Appointed Daughter.'—(*Vivādaratnākara*, p. 562.)

92. शङ्खलिखित] पुत्रिका पुत्रवदिति प्राचेतसः । तस्यापत्यं पुत्रिकासुतो मातामहपितामहाभ्यां पिण्डदः ।... ...तस्मात्तु संशयेनेहोपेयादभ्रातृकां स्त्रियम् ।

The Appointed Daughter is like the son—says Prāchetasa ; her son shall offer the funeral cake to his father's father, as also to his mother's father. . . . . . . Hence on account of there being a doubt, one should not marry a girl who has no brother.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, pp. 559-560.]

NOTES

'*Doubt*'—as to whether or not the daughter has or has not been so 'appointed.'—(*Vivādaratnākara*, p. 560.)

93. जाबालि] पुत्रिकायाः प्रदाने तु स्थालीपाकेन धर्मवित् ।
अग्निं प्रजापतिं चेष्ट्वा—पुत्रदाने तथैव च ॥

The man knowing the law should give away the Appointed Daughter after having offered sacrifices to Agni and to Prajāpati, by the *Sthālīpāka* process.—The same should be done also at the giving away of the son (for adoption).—(*Jābāli.*) [Quoted in *Aparārka*, p. 736.]

94. मनु 9. 140.] मातुः प्रथमतः पिण्डं निर्वपेत् पुत्रिकासुतः ।
द्वितीयं तु पितुस्तस्याः तृतीयं तु पितुः पितुः ॥

The son of the Appointed Daughter shall offer the first cake to his mother, the second to her father and the third to her father's father.—(*Manu*, 9. 140.) [Quoted in *Vivādaratnākara*, p. 563; *Vīramitrodaya*, p. 599.]

NOTES

The offering laid down here is different from the one prescribed in Manu, 9. 132, where it is said that 'the son of the Appointed Daughter shall offer the cake to his father and to his mother's father.'—Some people read '*tasya*' for '*tasyāḥ*'; those who accept this reading offer the cakes, *first* to the Appointed Daughter (the mother), then to his own progenitor, and the third to the father of that progenitor. Under this view, there would be no offering of cake to the mother's father.—(*Medhātithi.*)

This text lays down the order of the *shrāddha*-offering. The first cake is to be offered to the mother, then to the mother's father, and then to the mother's father's father. This being done, if the person making these offerings is one whose progenitor has got no other son, then he shall make the offering also to his progenitor, the progenitor's father and the progenitor's grandfather; as has already been said before.—(*Sarvajñanārāyaṇa.*)

The son of the Appointed Daughter shall first of all offer the cake to his mother; the second to the father of that mother, and the third to the mother's grandfather; to his progenitor, to his father and to his grandfather, he shall offer the cake as already said before.—(*Kullūka.*)

This text lays down the order of cake-offerings which is peculiar to the case of the 'Son of the Appointed Daughter.'—'*Tasyāḥ*' stands, in

both places, for the *mother*. Thus there are three cakes to be offered: (1) to the mother, (2) to the mother's father, and (3) to the mother's grandfather. In cases where the mother of the offerer is not an 'Appointed Daughter,' he is to make the offerings to (1) the mother's father, (2) to the mother's grandfather, and (3) to the mother's great-grandfather (*i.e.*, none to the mother herself.)—(*Rāghavānanda.*)

(1) To the mother, (2) to the mother's father, and (3) to the mother's grandfather.—(*Nandana.*)

(3) Kṣetrāja—Soil-Born

95. मनु 9. 167.] यस्तल्पजः प्रमीतस्य क्लीबस्य व्याधितस्य च ।
स्वधर्मेण नियुक्तायां स ज्ञेयः क्षेत्रजः सुतः ॥

If a son is born of the wife of a man,—either dead or impotent or diseased,—who has been duly authorised,—that son is to be known as *Kṣetraja*, '*Soil-Born.*'—(*Manu*, 9. 167.) [Quoted in *Vivādaratnākara*, pp. 555-556; *Vīramitrodaya*, p. 605; *Smṛtichandrikā*, p. 667.]

Notes

'*Diseased*,'—suffering from some incurable disease, such as consumption and the like.—(*Medhātithi.*)

'*Talpa*' is *wife*;—the son begotten on her by her younger brother-in-law, or by a *Sapiṇḍa*, or by a man of the same caste;—'*Svadharmeṇa*,' '*duly*'—*i.e.*, in accordance with the rules laid down in connection with the begetting of *Kṣetraja* sons,—such as the man should besmear his body with clarified butter and so forth.—(*Sarvajñanārāyaṇa.*)

That son has been declared by Manu and others to be 'Soil-Born' who has been begotten on the wife of a man who has died, or is impotent or is suffering from some such disease as prevents him from procreation,—the wife being duly authorised by her elders—in accordance with the rules of *Niyoga*, such as 'smearing with clarified butter,' and so forth.—(*Kullūka.*)

The 'Soil-Born' son is defined here—'*Pramīta*,' '*Dead*,' includes also the *outcast* and the rest;—'*Klība*,' '*impotent*,' stands for *inability to beget children*; it is thus that the *Pāṇḍavas* became included. The '*Kṣetra*' '*Soil*,' here stands for the *wife*.—(*Rāghavānanda.*)

'*Talpajaḥ*,' born of the wife.—'*Svadharmeṇa*,' the man having besmeared himself with clarified butter.—(*Rāmachandra.*)

'*Talpa*,' wife.—'*Vyādhi*' here stands for such disease as is *incurable*.—'*Svadharmeṇa*,' such as 'smearing with clarified butter' and the like.—(*Vivādaratnākara*, p. 555.)

So long as the husband is alive, though unable to beget children, 'authorisation' is necessary by the husband as well as the elders; after his death, it is by the elders only.—(*Vīramitrodaya*, p. 605.)

96. याज्ञवल्क्य 2. 128.] क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा ।

The *Soil-Born* son is that begotten on a man's wife by another person who may or may not be of the same *gotra.*—(*Yājñavalkya,* 2. 128.) [Quoted in *Vivādaratnākara,* p. 556; *Madanapārijāta,* p. 650; *Vīramitrodaya,* p. 596.]

NOTES

The 'Soil-Born' son is that begotten on a man's '*kṣetra*'—wife—by another person who may be a *Sagotra* of his, or not,—in the manner of '*Niyoga.*'—(*Vishvarūpa.*)

When on the '*kṣetra*'—wife—of one man a son is begotten by another who is a *Sagotra* or some other relative of the woman's husband,—that son is the 'Soil-Born' son of that husband.—(*Aparārka.*)

'*Itareṇa,*'—the son begotten by the younger brother-in-law, or a *Sapiṇḍa,* is the 'Soil-Born,' [in the manner prescribed for '*Niyoga,*' adds the *Bālambhaṭṭi*].—(*Mitākṣarā.*)

The son begotten on the wife of one man by another—who may or may not be his *Sagotra*—who has been 'authorised' by '*Niyoga,*'—is the 'Soil-Born' son of the husband of the wife.—In a case where there is an understanding between the two men to the effect that the son born shall belong to both of them, the son belongs to both: this is what is meant by Yājñavalkya's text 2. 127;—it has been declared by Manu (9. 53) also—'If the seed is given for the purpose of sowing, after the acceptance of a compact,—in that case both, the owner of the soil and the owner of the seed, are regarded to be sharers of the produce.'—(*Vīramitrodaya-Ṭīka* on *Yājñavalkya.*)

'*Sagotra*' here stands for the *Sakulya*; and '*itareṇa*' for a man of a superior caste.—(*Vivādaratnākara,* p. 556.)

The son begotten according to the *Niyoga*-process, by a person belonging to the same caste, or by one belonging to the same *gotra,* or by a *Sapiṇḍa,* or by the younger brother-in-law,—is the 'Soil-Born' son.—(*Madanapārijāta,* p. 650.)

In the foregoing text *Yājñavalkya* has spoken of the 'Soil-Born' son as 'begotten according to the Niyoga-process,' which indicates that the son should be begotten by the younger brother-in-law and the rest only when 'authorised' by their elders, and that too in the manner prescribed for '*Niyoga.*' The begetting of the child in any other manner would involve sin.—The 'Soil-Born' son, described in *Yājñavalkya,* 2. 127, and in *Manu,* 9. 53 is called the '*Dvyāmuṣyāyaṇa*'; though he is born of the 'body' of the progenitor (who supplied the seed), yet, by reason of his not being begotten on his '*own wife,*' he is inferior to the *Aurasa,* 'Body-born' son—(*Vīramitrodaya,* pp. 599-600.)

97. मनु 9. 190.] संस्थितस्यानपत्यस्य सगोत्रात् पुत्रमाहरेत् [*v.l.*, तन्तुमाहरेत्]।
तत्र यद्रिक्थजातं स्यात् तत् तस्मै प्रतिपादयेत् ॥

In the case of a man dying childless, if an issue is raised from a member of the same *Gotra*, all the property that there may be shall be delivered to that child.—(*Manu*, 9. 190.) [Quoted in *Aparārka*, p. 742 ; *Vivādaratnākara*, p. 589.]

NOTES

If an issue is raised from a *Sagotra*, even by an *unauthorised* wife,—that issue, having no other 'family,' will receive the property of the husband of that wife.—Some people have held that this refers only to a *Shūdra* woman ; according to these people, the '*Gūḍhaja*,' '*Kānīna*' and '*Sahoḍha*' sons also are permissible only for the *Shūdra*, not for the *Brāhmaṇa* and the rest.—(*Sarvajñanārāyaṇa*.)

If the wife of a man who has died without issue, on being authorised by her elders, raises a son from a man of the same *Gotra*, according to the rules of *Niyoga*,—then, whatever property might have been left by the dead person shall be delivered to the said son. Though this has already gone before (9. 59) yet it is reiterated here for the purpose of adding the '*Sagotra*' to the list of 'authorisable' persons, and also for the purpose of asserting the son's title to the inheritance.—(*Kullūka*.)

Reiterating what has gone under 9. 59, Manu here declares that the property of the widow should be given to this posthumous son.—'*Āharet*,' *i.e.*, should raise after widowhood.—'*Dhanam*,'—the property referred to is what has been spoken of under Manu, 9, 146 ; the only difference being that under the previous verse it was the progenitor that is to deliver the property, while under the present text, it is the widow that is to deliver it.—(*Rāghavānanda*.)

What is stated here is a rule alternative to that under which the property of the childless man is to go to his brother.—'*Sagotrāt*,' *i.e.*, from the younger brother-in-law and others.—'*Āharet*' should raise, produce ; '*Patnī*' (the widowed wife), '*with the authority of her elders*,'—these two terms have to be supplied.—(*Nandana*.)

'*Tasmai*,' to the child.—(*Aparārka*, p. 742.)

The wife of the man who has died childless shall raise an issue 'from a *Sagotra*, *i.e.*, either from her younger brother-in-law, or from some other *Sapiṇḍa* ;—and she shall deliver to that son, and not take for herself, whatever property there may be that belonged to her husband.—Such is the explanation given by the *Pārijāta*.—The author of the *Prakāsha*, on the other hand, explains the meaning to be that 'the king himself shall invite the *Sagotra* to raise the issue and also deliver the property to the child.' In the final result there is no difference between the two courses.—(*Vivādaratnākara*, p. 589.)

98. नारद 12. 57.] क्षेत्रिकानुमते क्षेत्रे बीजं यस्य प्रकीर्यते
कात्यायन] [*v.l.*, बीजं यस्य क्षेत्रे प्रजायते]
तदपत्यं द्वयोरेव बीजिक्षेत्रिकयोर्भवेत् ॥

If a man's seed is sown in another man's soil, with the permission of the owner of the soil,—the child that is born belongs to both, the owner of the seed as well as the owner of the soil.—(*Nārada*, 12. 57; *Kātyāyana*.) [Quoted in *Dāyabhāga*, p. 48; *Aparārka*, p. 733; *Vivādaratnākara*, p. 557; *Vīramitrodaya*, p. 604.]

NOTES

The child belongs to both if there has been an agreement to that effect.—(*Vīramitrodaya*, p. 604.)

99. बौधायन] मृतस्य च प्रसूतो यः क्लीबस्य व्याधितस्य वा।
अन्येनानुमतो [*v.l.*, ते] वा स्यात् स्वे क्षेत्रे क्षेत्रजस्सुतः ॥
स एव द्विपिता [*v.l.*, द्विपितृको] द्विगोत्रश्च द्वयोरपि
स्वधारिक्थभाग् भवति ॥

If a son is begotten on the wife of a man who is dead or impotent or diseased, by another person who has been authorised, that son is the *Soil-born* son. He has two fathers and two *Gotras*, and he is entitled to offer *Shrāddha* to, and inherit the property of, both the fathers.—(*Baudhāyana*.) [Quoted in *Dāyabhāga*, p. 48; *Vivādaratnākara*, p. 556; *Vīramitrodaya*, p. 605.]

NOTES

The meaning is that the 'Soil-born' son is that begotten on the wife of the impotent and the rest, by another man authorised by him.—(*Dāyabhāga*, p. 48.)

One who is begotten by '*anya*,' *i. e.*, the younger brother-in-law and the rest.—'*Dvipitā*'—this compound has not taken the '*Kap*' affix added at the end, because the rules regarding these affixes to be added to compounds are not obligatory.—'*Dvigotraḥ*,' bearing the *Gotra* of both the fathers.—'*Svadhā*,' offerings made to *Pitṛs*—(*Vivādaratnākara*, p. 556.)

100. विष्णु] नियुक्तायां सपिण्डेनोत्तमवर्णेन वोत्पादितः क्षेत्रजो द्वितीयः ॥

The son begotten by a *Sapiṇḍa*, or by a man belonging to the highest caste, on an authorised woman, is the *Soil-born*, the second kind of son.—(*Viṣṇu*.) [Quoted in *Vivādaratnākara*, p. 555.]

NOTES

'*Authorised*'—by her husband, or by her elders.—'*Second,*' *i.e.*, slightly inferior to the Body-born or legitimate son. (*Vivādaratnākara*, p. 555.)

101. वसिष्ठ] तदभावे नियुक्तायां क्षेत्रजो द्वितीयः ।

If there is no Legitimate Son, the second is the *Soil-born* son, begotten on the authorised wife.—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 555.]

102. नारद] न स्यात् क्षेत्रं विना शस्यं न बीजं च विनाऽस्ति तत् ।
अतोऽपत्यं द्वयोर्दृष्टं पितुर्मातुश्च धर्मतः ॥

The soil could not be productive without the seed ; nor the seed without the soil ; hence the child legally belongs to both, the progenitor and the mother.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 581.]

103. अर्थशास्त्र II, p. 40.] परपरिग्रहे बीजमुत्सृष्टं क्षेत्रिण इत्याचार्याः ।
माता भस्त्रा—यस्य रेतस्तस्यापत्यमित्यपरे ।
विद्यमानमुभयोरिति कौटिल्यः ।

The seed sown in another man's soil belongs to the owner of the soil,—say the Teachers ;—the mother is only the containing bag ; the child belongs to the man with the seed,—say others ;—it belongs to both—says Kauṭilya.—(*Arthashāstra* II, p. 40.)

104. आपस्तम्ब] अप्रमत्ता रक्षत तन्तुमेतं मा च क्षेत्रे परबीजानि वाप्सुः ।
जनयितुः पुत्रो भवति । साम्पराये मोघं वत्ता
कुरुते तन्तुमेतम् ॥

With due care you should preserve your line.—Never let the seeds of others be sown in your soil ; the son belongs to the progenitor ; the sower of the seed makes such a child useless in regard to spiritual results.—(*Āpastamba.*) [Quoted in *Vivādaratnākara*, p. 577.]

NOTES

'*Apramattāḥ*'.—*i.e.*, without carelessness.—'*Line,*' the line of descendants, consisting of the son, the grandson and the rest.—'*May the seeds of others never be sown in your soil.*'—'*The son belongs,*'—*i.e.*, is of use—'*to the*

progenitor,'—*i.e.,* to the owner of the seed.—*'Sāmparāye,'*—in regard to spiritual results ;—*'mogham,'* useless.—(*Vivādaratnākara*, p. 577.)

105. मनु] अपुत्रां गुर्वनुज्ञातो देवरः पुत्रकाम्यया ।
सपिण्डो वा सगोत्रो वा घृताभ्यक्त ऋतावियात् ।
अनेन विधिना जातः क्षेत्रजोऽस्य भवेत् सुतः ॥

With a view to beget a son, the younger brother-in-law or a *Sapiṇḍa* or a *Sagotra*, besmeared with clarified butter, shall, with the permission of the elders, approach the childless woman 'in season.'—The son born in this manner would be the *Soil-born* son.—(*Manu.*)

106. शङ्खलिखित] नियतं क्षेत्रिणामपत्यमिति च वेदवादः । मातुरपत्यमित्येके ऋषयो वदन्ति । द्व्यामुष्यायणमनुमन्त्रयते ।

The child always belongs to the owner of the soil,—such is the declaration of the Veda ;—some sages declared that the child belongs to the mother.—The *Dvyāmuṣyāyaṇa* son (in making offerings) names both the fathers.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 581.]

NOTES

'Dvyāmuṣyāyaṇa' is the child with two fathers.—*'anumantrayatē,'* names both the fathers in reference to the one and the same cake that he is offering.—(*Vivādaratnākara*, p. 581.)

107. मनु 9. 52-53.] फलं त्वनभिसन्धाय बीजिनां क्षेत्रिणां तथा ।
प्रत्यक्षं [*v.l.*, प्रत्येकं] क्षेत्रिणामर्थो बीजाद् योनिर्बलीयसी ॥
क्रियाभ्युपगमात् त्वेतद् [*v.l.*, क्रियाभ्युपगमार्थेन] बीजार्थं यत् प्रदीयते ।
तस्येह भागिनौ दृष्टौ बीजी क्षेत्रिक एव च ॥

If, between the owner of the soil and the owner of the seed, there has been no compact regarding the produce, then the crop belongs clearly to the owner of the soil ;—the receptacle being more important than the seed.—If however the seed has been given for the purpose of sowing, after the acceptance of a compact,—in that case, both, the owner of the soil and the owner of the seed, are regarded as sharers of the produce.—(*Manu*, 9. 52-53.) [Quoted in *Mitākṣarā*, pp., 677-678; *Parāsharamādhava*, p. 350 ; *Vīramitrodaya*, pp. 599-600 ; *Vivādaratnākara*, p. 557.]

NOTES

The term '*Kṛiyā*' stands for the compact, the agreement, to the effect that 'this shall be so and so'; when such a compact has been accepted, and the seed is given for the purpose of raising the crop,—then of this crop, both are sharers.—(*Medhātithi.*)

'*Phalam anabhisandhāya*'—without entering into a compact to the effect that 'the produce shall belong to both of us equally,'—if the owner of the seed proceeds to act (and sow the seed),—then the '*artha*,' *i.e.*, the produce—belongs to the owner of the soil. '*Pratyakṣam*,' 'clearly,' *i.e.*, as is the popularly recognised practice.—'*More important*,' as a basis of ownership.—'*Kriyā*,' compact, to the effect that 'the produce shall belong to both of us equally'; if a soil is made over to another man on this understanding, for the purpose of sowing.—(*Sarvajñanārāyaṇa.*)

'The child that shall be born of this woman shall belong to both of us';—where such a compact has not been made, there undoubtedly, the child belongs to the owner of the soil. In the manner described, the soil is more important than the seed.—In case the owner of the soil makes over the soil for the sowing of the seed, after having made the compact that 'the child that is born shall belong to both of us,'—of the child in this case, both,—the owner of the soil and the owner of the seed,—have been declared to be sharers.—(*Kullūka.*)

If there has been no such agreement as that 'the child shall belong to both,'—because the owner of the seed has been prompted by mere lust, and because 'the receptacle is more important than the seed,'—the conclusion is [that the produce belongs to the owner of the soil].—On the other hand, if there has been a compact, the produce belongs to both.—'*Kṛiyā*' is agreement, to the effect that 'the child born shall belong to both of us'; in cases where the owner of the soil makes over the soil for the purpose of sowing the seed, after such an agreement has been entered into, the child has been found, in actual practice, to belong to both.—(*Rāghavānanda.*)

When a man sows his seed in any another man's soil without entering into any such compact as 'so much of the produce shall belong to the owner of the soil and so much to the owner of the seed,'—he acts only for the benefit of the owner of the soil; and among cultivators it is found that '*the receptacle is more important than the seed.*'—'*Kriyābhyupagamāt*,' if the owner of the soil has consented to the owner of the seed sowing the seed in his soil,—then the '*artha*,' *i.e.*, the produce, in the shape of the seed, which is sown,—of that both are sharers.—(*Nandana.*)

'*Phalam anabhisandhāya*,' without entering into any such compact as 'the produce shall belong to both of us equally.'—'*Kriyābhyupagamāt*,' after the compact has been made,—if the seed is given,—both are sharers.—(*Rāmachandra.*)

'*Phalam anabhisandhāya*,'—without making any such compact as 'the child born shall belong to both of us,'—if one begets a child on another man's wife,—that child belongs solely to the husband of the woman; because 'the receptacle is more important than the seed,'—as is found in the case of cows, horses and other animals.—In a case where the owner of the soil has made over the soil to the owner of the seed for purposes of sowing,—after having made

the compact that 'the child born shall belong to both of us,'—of the child born of that soil both—the owner of the soil and the owner of the seed—have been held—by the great sages—to be sharers.—(*Mitākṣarā*, pp. 677–679.)

In case where the other man (the owner of the seed), though having a son of his own, begets a son on another man's wife, after having made the compact that 'the child that is born shall belong equally to both of us,'—that son shall be a son to both men.—(*Vivādaratnākara*, p. 556.)

In a case where without making any such compact as that 'the child born shall belong to both of us,' the owner of the seed begets a child on another man's wife, that child belongs to the owner of the 'soil,' not to the owner of the seed; since '*the receptacle is more important than the seed*'; as has been found in the case of cows, horses and other animals.—In a case however where the said compact has been made, and then the soil made over to the owner of the seed, for the purpose of sowing,—then of what is produced in that soil, both, the owner of the seed and the owner of the soil, are owners.—(*Parāsharamādhava*, p. 350.)

In a case where a child is begotten on another man's wife, without any compact as to the 'produce,'—the child belongs to the owner of the soil; as is found to be the case among cultivators; . . . the reason for this is that '*the receptacle is more important than the seed*,' as is found in the case of cows, horses and other animals.—In ordinary practice, if a man has lands, but no seeds for sowing,—and another man has the seeds but no lands,—the two come to the understanding—'You have lands and I have seeds,—let us cultivate the lands and the produce shall belong to both of us';—having made this compact, both become sharers in the produce.—In the same manner, in the case of the *Dvyāmuṣyāyaṇa* son, if there has been a compact to the effect that 'the child that is born shall belong to both of us,' before a man sows his seed in another man's 'soil,'—then the child that is born belongs to both men; and it is by reason of his having both men as his 'fathers' that the son is called '*Dvyāmuṣyāyaṇa*.'—Thus the upshot is that it is only in cases where there has been a compact that the owner of the seed has a claim on the son, who, on that account, becomes a *Dvyāmuṣyāyaṇa*; the claim of the owner of the soil, on the other hand, over the *Kṣetraja* son remains intact in both cases.—(*Vīramitrodaya*, pp. 599-600.)

108. मनु 9. 59-60.] देवराद्वा सपिण्डाद्वा स्त्रिया सम्यङ् नियुक्तया ।
प्रजेप्सिताऽधिगन्तव्या सन्तानस्य परिक्षये ॥
विधवायां नियुक्तस्तु घृताक्तो वाग्यतो निशि ।
एकमुत्पादयेत् पुत्रं न द्वितीयं कथञ्चन ॥

On failure of issue, the woman, on being authorised, may obtain, in the proper manner, the desired offspring,—either from her younger brother-in-law or from a *Sapiṇḍa*.—He who has been authorised with regard to a "widow" shall, anointed with clarified butter, and with speech controlled, beget, at night,

one son,—and on no account a second one.—(*Manu*, 9, 59-60.) [Quoted in *Mitākṣarā*, p. 680; *Parāsharamādhava*, p. 350; *Vīramitrodaya*, p. 601.]

NOTES

This text enjoins the practice of '*Niyoga*' hemmed in by all its restrictions.... The term '*Santāna*' here stands for the *son*; as regards the daughter, she is regarded as '*Santāna*' only when she has been 'appointed,' as it is only then that she 'carries on' (*Santanoti*) perpetuates, her father's family, which is not done by the daughter in ordinary circumstances.—The '*failure*' of such 'issue' consists in no *son* being born, or in a son, though born, dying off, and in the 'non-appointment' of the daughter.—That the 'authorisation' of the woman is to be done by her 'elders,' we learn from other Smṛti-texts; in fact, the very name '*Niyoga*' suggests the idea of *authorisation*; and *authorisation* can proceed only from a superior.... The elders in this connection would be the mother-in-law, the father-in-law and other persons belonging to her husband's family,—and not the woman's own father and other relations. ... The *Mahābhārata* also shows that 'authorisation' can proceed only from the woman's relations *on the husband's side*. It is for this reason that there is to be no 'authorisation' when the husband's brother's son is there..... '*Desired offspring*,'—*i.e.*, an offspring capable of fulfilling his duties; hence in the event of a girl or a blind or deaf son being born, the process of 'authorisation' is to be repeated.—'*Widow*'—no significance attaches to this term; as the rule is applicable also to the case of the woman whose husband is alive, but subject to such disabilities as *impotence* and the like. That such is the meaning is clear from what follows in *Manu*, 9. 63 .... What is meant is that *only one*—never a second—'*Kṣētraja*' son is to be begotten. But the next verse (9. 61) permits a second attempt in the event of the first having proved futile.—(*Medhātithi*.)

'*Dēvarāt*,' from the husband's uterine brother;—failing him, from a *Sapiṇḍa*, *i.e.*, a '*dēvara*,' husband's younger brother, who is a mere '*Sapiṇḍa*,' or from the husband's *step-brother*, or from his maternal and other cousins.—'*Samyak*,' in the manner of anointing with clarified butter and so forth.—'*Authorised*,' by her husband or elders.—'*Desired offspring*,' *i.e.*, a son, not a girl or a eunuch. This implies that if a son is not born, the process should be repeated.—'*Vidhavā*'—stands here for one who is without a husband capable of begetting children.—It is the opinion of some people that the process should not be repeated.—(*Sarvajñanārāyaṇa*.)

If there is no offspring, the woman, being authorised by her husband or other relatives, shall obtain the desired offspring from her husband's younger brother or from some other *Sapiṇḍa*, by approaching the man 'anointed with clarified butter, etc., etc.'—The term '*desired*' implies that if she obtains an incompetent son, she may approach the man again.—The term '*Vidhavā*' stands for one who has no husband capable of begetting children; as even when the husband is living, if he is incompetent, the other man, on being authorised by the incompetent husband and other elders, shall anoint his body with clarified

butter, and keeping silent, he shall beget a son at night;—never a second one.—(*Kullūka.*)

'*Samyak,*'—honestly.—The woman is to be approached only till a son is born.—The term '*desired*' excludes the eunuch and other incompetent sons.—The second verse lays down the procedure of *Niyoga*.—In the word '*Vidhavā*,' the term '*dhava*' stands for the husband capable of accomplishing the wife's secular as well as spiritual welfare; and the '*Vidhavā*' therefore would be a woman who has no such husband as is competent to beget children.—'*Authorised*'—by elders.—The implication of this text is that an impotent man can in this manner have a 'son' through his wife.—(*Rāghavānanda.*)

The text lays down what should be done under abnormal circumstances.—'*Authorised*,' by her elders;—"*on failure of issue*,' in the event of the husband having no son.—'*Vidhavā*' means 'one whose husband is *useless*,' *i.e.*, incapable of begetting children.—(*Nandana.*)

By '*Vidhavā*' here is meant one whose husband, by reason of impotence, or disease, is incapable of begetting children; *e.g.*, *Kunti* who, though her husband Pāṇḍu was alive (had recourse to *Niyoga.*)—(*Rāmachandra.*)

Mitākṣarā (p. 650), *Parāsharamādhava* (p. 350) and *Viramitrodaya* (p. 601) quote these texts as describing the practice of '*Niyoga*' which, they say, is meant for such women as have lost their husband *after betrothal* only, and not for fully *married* women, in whose case the practice is definitely forbidden in the verses that follow these. This view is also supported by what follows in *Manu*, 9. 69, etc., etc.

109. मनु 9. 64.] नान्यस्मिन् विधवा नारी नियोक्तव्या द्विजातिभिः ।
अन्यस्मिन् हि नियुञ्जाना धर्मं हन्युः सनातनम् ॥

By twice-borns the widow shall not be "authorised" in regard to another man; by "authorising" her in regard to another, they would be violating the eternal law.—(*Manu*, 9. 64.) [Quoted in *Mitākṣarā*, p. 680; *Parāsharamādhava*, p. 350; *Viramitrodaya*, p. 601.]

NOTES

This is the prohibition of the practice of 'authorisation' which has been sanctioned in the foregoing texts.—In this connection, some people have held the following view:—"Inasmuch as this text contains the term 'widow,' it prohibits the practice with reference to the woman whose husband is dead; so that the impotent husband may still 'authorise' his wife; both the sanction (in the foregoing texts) and the prohibition (in the present text) would thus have distinct spheres of application (and there would be no inconsistency between the texts)."—The correct view however is as follows:—The text that sanctions the practice mentions the *failure of issue* as the occasion for it; and as a matter of fact, this occasion is present in both cases. . . Then again, a woman is called

'*Vidhavā*' (widow) when she ceases to have any intercourse with her '*dhava*,' husband; and this condition also is present in both cases,—in that of the husband being dead, as well as in that of his being impotent or diseased. . . Thus the sphere of application of the two texts being the same, we must take the case as being one of *option*. This option is possible only in view of the obligatory character of the duty of begetting children. . . She who would not have recourse to the practice of *Niyoga* would fail to obtain the benefits that would be conferred by the son; and if she has recourse to the practice with a view to obtaining those benefits, then she would be transgressing the prohibition, and this act would stand on the same footing as the performance of the *Shyena* sacrifice, which is performed for the special purpose of encompassing the death of the enemy, and involves the transgression of the prohibition of *killing* . . . Our opinion is that judging from the instance of Vyāsa and others it has to be admitted that, in the begetting of the *Kṣetraja* son, if one acts according to the behests of elders, there can be nothing wrong.—(*Medhātithi.*)

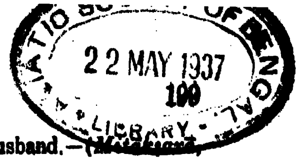
Having described the practice of *Niyoga* in the foregoing texts, the author proceeds to forbid it. The Brāhmaṇa and the rest should not "authorise" a widow in regard to any man other than her husband, such as the younger brother-in-law and the rest. By authorising her, they would be destroying the eternal law of a woman having only one husband..—(*Kullūka.*)

The present text is meant to preclude the notion that the sanction of the practice of *Niyoga* carries with it the sanction of the remarriage of the widow also. The meaning is that the widow is not to be made over to any other man—save the person who has been authorised to beget one son on her. '*Authorising*' here stands for regular formal marriage; otherwise the present text would be inconsistent with what has gone before,—one sanctioning the practice of *Niyoga* and the other forbidding it.—'*Dharmam*,' the law relating to woman having only one husband.—(*Rāghavānanda.*)

The practice of *Niyoga* that has been sanctioned in the foregoing texts is such as cannot be properly carried out by the men of the present day; and hence it should not be done,—'*Anyasmin*,' other than the husband.—'*Sanātanam*,' prescribed in the Veda,—'*Dharmam*,' the law that a woman should not have more than one husband.—(*Nandana.*)

'*Anyasmin*'—a person other than those who have been specially named as suitable for *Niyoga*.—(*Rāmachandra.*)

The practice of *Niyoga* sanctioned in the foregoing texts is meant for those cases where the man to whom the girl had been *betrothed* has died—before the regular marriage; and the present text forbids the practice in the case of girls who have lost their husbands after the regular marriage has been performed.—It will not be right to regard this (sanction and prohibition) to be a case of *option*; as the *authorising person* has been censured, and unchastity has been deprecated in woman; in fact Manu (5. 161) has forbidden recourse to another man, even for the purpose of securing a son. The *Niyoga* that is really sanctioned is what is described by Manu in the verses 9. 69-70, where it is declared that 'when the man to whom the girl has been betrothed dies without being married, then the uterine brother—younger or elder—of that same man should marry her in the prescribed manner—of anointing his body with clarified butter etc., etc.'; but this 'marriage' is only for this special purpose; and the



child that is born belongs to the first (betrothed) husband.—(Mitākṣarā, pp. 680–684; Parāsharamādhava, pp. 350—351.)

The *Viramitrodaya*, pp. 601–603, after a long discussion, comes to the conclusion that the practice is permitted only in cases where the man has died after (not the mere *betrothal*, but) the words conveying the gift of the girl to the man have been pronounced, and before the final marriage-rites have been completed. It is this case that is specifically mentioned in *Manu*, 9. 69-70.

110. मनु 9. 69-70.] यस्या म्रियेत कन्याया वाचा सत्ये कृते पतिः ।
तामनेन विधानेन निजो विन्देत देवरः ॥
यथाविध्यभिगम्यैनां शुक्लवस्त्रां शुचिव्रताम् ।
मिथो भजेताप्रसवात्सकृत् सकृदृतावृतौ ॥

If the husband of a maiden dies after the troth has been verbally plighted, then her own brother-in-law shall espouse her in the following manner: Having espoused (*or approached* according to *Mitākṣarā*) her according to law, he shall meet her, who is pure in her vows, clad in white garments, once only in each *period*, until issue.—(*Manu*, 9. 69-70.) [Quoted in *Mitākṣarā*, pp. 682-683; *Parāsharamādhava*, p. 351; *Viramitrodaya*, pp. 602-603.)

NOTES

This text lays down a practice in connection with maidens which has the form of *Niyoga*.—'*After the troth, etc.*,' *i.e.*, when she has been given away orally and accepted by the other party.—'*Espoused her*.'—This would be 'espousal' or 'marriage' only in name; as in such cases the maiden would be a '*punarbhū*,' 'remarried widow'; and even though 'married,' she would not be a 'wife' in the real sense of the term; her 'marriage,' which is nominal, being for one definite purpose.—(*Medhātithi*.)

The sanction regarding the approaching of the brother-in-law is restricted to the case herein stated,—*i.e.*, in the case of the maiden who has been only verbally betrothed; and it is a mistake to regard it as pertaining to the married woman.—(*Sarvajñanārāyaṇa*.)

While dealing with the subject of *Niyoga*, the author lays down certain peculiarities in regard to maidens. If the husband of a maiden dies after the giving away has been done verbally, her husband's younger brother shall espouse her.—(*Kullūka*.)

This refers to the case of the betrothed girl.—(*Rāghavānanda*.)

In the case of a betrothed girl, if the husband dies, what is to be done?—These two verses supply the answer.—(*Nandana*.)

In the case of the betrothed maiden, if the husband dies, his brother shall marry her in the manner prescribed for marriage.—(*Rāmachandra*.)

For the views of the *Mitākṣarā*, *Parāsharamādhava*, and *Vīramitrodaya*, see notes on foregoing texts. The view most favoured appears to be that—(*a*) Verses 59 and 60 have provided a description of the practice of *Niyoga* ;—(*b*) Verses 64—68 have forbidden the practice in the case of girls who have been regularly married ;—(*c*) Verses 69 and 70 sanction the practice in the case of girls widowed after betrothal and before regular marriage.

111. बौधायन.] यथाप्युदाहरन्ति—
द्विपितुः पिण्डदानं स्यात् पिण्डेपिण्डे च नामनी ।
त्रयश्च पिण्डाः षण्णां स्युरेवं कुर्वन्न मुह्यति ॥

In this connection they quote the following : 'The man with two fathers shall offer the cakes, pronouncing the names of both over each cake; there shall be three cakes for six ; by doing so one incurs no sin.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 559 ; *Vīramitrodaya*, p. 605.]

NOTES

'*Muhyati*' is equivalent to '*Duṣyati*,' incurs no sin.—(*Vivādaratnākara*, p. 559.)

'*Six*,'—*i.e.* (the two sets of) father, grandfather and great-grandfather.—(*Vīramitrodaya*, p. 605.)

112. हारीत] जीवति क्षेत्रजमाहुरस्वातन्त्र्यात् । मृते द्व्यामुष्यायणमनुमतबीजत्वात् । नाबीजं क्षेत्रं फलति नाक्षेत्रं बीजं प्ररोहति इत्युभयदर्शनात् उभयोरपत्यमित्येके । तेषामुत्पादयितुः प्रथमपिण्डो भवति, द्वौ पिण्डौ निर्वपेत् निर्वापे । अथवैकपिण्डे द्वावनुकीर्तयेत् ।

If the husband is living, they call the child his *Kṣetraja* son, because there is no freedom (for the woman). If the husband is dead, the child is called *Dvyāmuṣyāyaṇa*, "the son of two" ; because the seed had been sown with the permission (of the husband). The soil without the seed produces no crop ; the seed without the soil cannot grow ; perceiving these two facts, some people have held that the child belongs to both. Such sons offer the first cake to the progenitor ; at the Shrāddha, two cakes are to be offered ; or both the names may be mentioned in connection with the same cake.—(*Hārīta.*) [Quoted in *Aparārka*, p. 734 ; *Vivādaratnākara*, p. 557 ; *Vīramitrodaya*, p. 604.]

NOTES

'*Anuptabījatvāt*' (*v.l.*, for '*anūptabījatvāt*')—because no seed has been sown by the owner of the soil.—(*Aparārka*, p. 734.)

If the husband is living, the son, though born of another man, is called the *Kṣetraja* son of the husband : - why ?—'*because there is no freedom,*'—*i.e., for the woman.*—If the husband has died,—though even then, there is no freedom for the woman, who has been ordered to maintain the sanctity of her husband's bed, yet—the son that is born is called '*Dvyāmuṣyāyaṇa,*' *the son of two men* ;—why ?—'*anūptabījatvāt,*' because the soil has been sown with seed (*with the permission* of the owner of the soil).—'*Belongs to both,*' *i.e.*, to the owner of the seed as well as the owner of the soil.—'*Nirvāpē,*' *i.e.*, at the *Pitṛyajña* sacrifice to forefathers.—'*Ekapiṇdē dvāu,*' *i.e.*, two names on each of the two cakes ;—this is in accordance with the words of Āpastamba—'If a man has two fathers he should name both in connection with one cake.' --(*Vivādaratnākara*, p. 558.)

If the owner of the soil is alive, they call the son his '*Kṣetraja*' son ; - the reason for this is—'*asvātantryāt,*' 'because there is no freedom,' for the woman.—If the owner of the soil is dead,—even though then also there is no freedom for the woman, yet—the son does not belong to the owner of the soil only ;—because '*anūptabījatvāt,*' *i.e.*, because the sowing of the seed by the owner of the seed must have been done with the permission of the owner of the soil.—The justification for this view is added in the next sentence—'*The soil without the seed, etc.*'—'*Nirvāpē,*'—at the *Piṇḍapitṛyajña,*—*Dvyāmuṣyāyaṇa* sons should offer a separate cake to each of the two fathers ; —or both the fathers may be named with one and the same cake, *i.e.*, two names with each of the (three) cakes (offered to the three ancestors, father, grandfather and great-grandfather.).—(*Vīramitrodaya*, pp. 604-605.)

113. शङ्खलिखित] मन्त्रसंस्कारंकर्तुरपत्यमित्याङ्गिरसः। बीजिक्षेत्रिकयोर-
नुमते यद् बीजं प्रकीर्यते तद्‌द्विधा शस्यमित्युशनाः ॥

The child belongs to one who has performed the sacramental rite—says Āṅgirasa. When the seed is sown with the consent of the owner of the seed and the owner of the soil, the produce belongs to both—says Ushanas.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 557 ; *Vīramitrodaya*, p. 604.]

NOTES

'*Mantra, etc*'—*i.e.*, one who has married the woman.—' '*Dvidhā,*' to both—'*Shasyam,*' the produce of the soil –(*Vivādaratnākara*, p. 557.).

114. कात्यायन] क्षेत्रिकस्य मतेनापि फलमुत्पादयेत्तु यः।
तस्येह भागिनौ तौ तु न फलं हि विनैकतः ॥

If a man raises a crop (in another man's land) with the permission of the owner of the soil, both of them are sharers in the produce ; as there could be no produce if either of them were absent.—(*Kātyāyana.*) [Quoted in *Vīramitrodaya*, p. 604.]

115. वसिष्ठ] क्षेत्रिणः पुत्रो जनयितुः पुत्र इति विवदन्ते ।

There is a difference of opinion as to the son belonging to the owner of the soil or to the progenitor.—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 577.]

116. याज्ञवल्क्य 2. 127.] अपुत्रेण परक्षेत्रे नियोगोत्पादितः सुतः ।
उभयोरप्यसावृक्थी पिण्डदाता च धर्मतः ॥

If a son is begotten by an authorised sonless man on the wife of another man, that son is legally declared to be the heir and offerer of Shrāddha to both.—(*Yājñavalkya*, 2. 127.) [Quoted in *Vivādaratnākara*, p. 556 ; *Parāsharamādhava*, p. 350 ; *Vīramitrodaya*, p. 599 ; sec. II, 205.]

NOTES

If it is argued that '*Niyoga*' having been forbidden for the Brāhmaṇa, there was no occasion for any such rule as that propounded in the text,—the answer is that it would be for the *Kṣattriya* and other castes.—But in reality, *Niyoga* has been forbidden for the *Brāhmaṇa* female, not for the Brāhmaṇa male ; so that there could be no *Kṣētraja* son for the Brāhmaṇa ; but the Brāhmaṇa could certainly beget a son on a woman of the *Kṣattriya* and other castes (for the men of these castes). Hence there is nothing wrong in having had recourse to this kind of son, when there is no legitimate son.—(*Vishvarūpa.*)

When 'a man'—the brother-in-law or some such person—who also is sonless,—begets a son on the wife of another man ;—'*Kṣētrē*,' on the wife ;—that son is for the benefit of both men and is called '*Dvyāmuṣyāyaṇa*,' and he inherits the property of, and offers Shrāddha to both his fathers,—the owner of the soil as well as the owner of the seed—such being the teaching of the *Dharmashāstra*.—(*Aparārka.*)

This text defines the '*Dvyāmuṣyāyaṇa*.' When, in accordance with *Yājñavalkya*, 1. 68, the brother-in-law (or a *Sapiṇḍa* or *Sagotra*,) who has no son of his own, begets, on being authorised by the elders, a son on the wife of another man,—that son is, under the law, the '*heir to*,'—*i.e.*, the inheritor of the property of—'*and the offerer of Shrāddha to*'—both, the owner of the seed and the owner of the soil. The meaning of this is as follows :—When the brother-in-law or such other relative, having no son of his own,

desires to have a son and thereupon, being 'authorised,' begets a son on the wife of a man who also has no son,—then this son, who has two fathers and is called '*Dvyāmuṣyāyaṇa*,' inherits the property of both his fathers, and also offers the *Shrāddha* to both ;—but if the authorised person has a son of his own, and begets the son solely for the benefit of the woman's husband, then the son belongs to the husband only, not to the owner of the seed [and such a son is not called '*Dvyāmuṣyāyaṇa*'—says the *Bālambhaṭṭi*]. Such a son does not always inherit the property of, or offer the *Shrāddha* to, the owner of the seed he does so only when the son has been begotten on the express understanding between the two men to the effect that the son shall belong to both,—as declared by *Manu* (9. 53) ; in the absence of such an understanding, the son belongs to the owner of the soil (see *Manu*, 9. 52). - This sanction of the practice of *Niyoga* refers to cases where the girl has been only betrothed, etc., etc., (see above, under *Manu*, 9. 64). -(*Mitākṣarā*.)

When on the wife of another man, her brother-in-law or some other person belonging to the same or a different *Gotra*, authorised by the elders—begets a son,—this son legally inherits the entire property of, and offers *Shrāddha* to, both, the owner of the soil and the owner of the seed.—(*Viramitrodaya-Ṭika* on *Yājñavalkya*.)

When the brother-in-law or other relative has a son of his own, and begets the son for the woman's husband only, then the son belongs to the husband, and not to the owner of the seed. But even when the progenitor has a son, if the two men have entered into the compact that the son born shall belong to both equally, then the son belongs to both—as declared by Manu.—(*Vivādaratnākara*, p. 556.)

When, on being authorised by the elders and others, the brother-in-law or other relative, having no son of his own, begets a son on the wife of another man who is sonless,—for the benefit of himself as well as the woman's husband,—that son is one 'with two fathers,' *Dvyāmuṣyāyaṇa* ; and he inherits the property of, and offers *Shrāddha* to, both the men. If however the begetter has a son already and begets the son on the wife of another man entirely for the latter's benefit, then the son belongs to the latter and not to the owner of the seed.—(*Parāsharamādhava*, p. 350.)

This text defines the *Dvyāmuṣyāyaṇa*. Though to the begetter the son is 'body-born,' yet, being born of another man's wife, he is inferior to the 'legitimate son.'—(*Viramitrodaya*, p. 599.)

(4) GUDHAJA—THE SECRETLY BORN SON

117. विष्णु] गूढोत्पन्नः षष्ठः । यस्य तल्पजस्तस्यासौ ।

The *Secretly Born* is the sixth (kind of son) ; he belongs to him of whose wife he is born.—(*Viṣṇu*.) [Quoted in *Vivādaratnākara*, p. 566.]

118. याज्ञवल्क्य 2.129.] गृहे प्रच्छन्न उत्पन्नो गूढजस्तु ततः स्मृतः ।

The son born secretly in the house is declared to be the 'Secretly born.'—(Yājñavalkya 2.129.)

[Quoted in *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

Notes

This son is of the same caste as the mother, it being not known who the progenitor is.—(*Vishvarūpa*.)

'If a son is born to a man's wife in his house, '*secretly*'—*i.e.*, without its being known who the actual progenitor is,—that son belongs to the owner of the woman and is known as his '*Gūḍhaja*,' 'secretly born,' son. This son has been spoken of after the 'soil-born,' because like this latter, he also has been begotten on a man's wife by another man.—(*Aparārka*.)

The 'secretly born' son is one born secretly of a woman in her husband's house. Such a son is to be regarded as a regular 'secretly born son' only when it is known that he has been begotten by a man of the same caste (as the woman's husband), even though it may not be definitely known (to the people) who the particular individual is. [The individual must be known to the woman; in cases where she has been approached by force and in the dark and does not know the caste or other particulars of the man, the son is a 'secretly born son' only in name; and such a son, according to some, should be cast off. This son also belongs to the wife's husband.—*Bālambhaṭṭī*.]—(*Mitākṣarā*.)

When a son is begotten on a man's wife in his own house, by another man, who, without 'authorisation,' has approached the woman by stealth,—this son is the 'secretly born son.'—(*Vīramitrodaya-Tīkā* on Yājñavalkya.)

When a son is secretly born to a woman in her husband's house, begotten by a person whose identity is not definitely known, but who belongs to the same caste, he is the 'secretly born' son. The progenitor would be 'unknown' only to the husband, not to the wife; that he belongs to the same caste would also be known only through the woman. If the son were begotten by a stranger who approached the woman by force, and on that account she also did not know his caste,—then, in that case, it would be a 'secretly born son' only in name, and not commended, like the son previously spoken of.—(*Madanapārijāta*, p. 651.)

When the son is born in the house secretly of a paramour, who is subsequently found to belong to the same caste,—he is the 'secretly born son' of the husband of that woman. That the paramour should belong to the same caste is indicated by Yājñavalkya himself in 2.133.—(*Vīramitrodaya*, pp. 605-606.)

119. मनु 9.170.] उत्पद्यते गृहे यस्य न च ज्ञायेत कस्य सः ।
स गृहे गूढ उत्पन्नस्तस्य स्याद् यस्य तल्पजः ॥

If a son is born in a man's house, and it is not known whose son he is,—this son, secretly born in the house, shall belong to him of whose wife he is born.—(*Manu*, 9. 170.) [Quoted in *Vivādaratnākara*, p. 566; *Vīramitrodaya*, p. 605.]

NOTES

If the mother were not known, then the caste also of the child would be uncertain. Because it has been declared by the ancients that 'the caste of the child whose progenitor is not known can be ascertained from that of its mother.'—The rule laid down in this text refers to a case where there is no suspicion regarding the progenitor being of a lower caste. In the event of such suspicion, there would be likelihood of 'an admixture in the reverse order'; and in that case, the son would not be entitled to perform the function of a 'son.'—(*Medhātithi.*)

'Gṛhē'—in the house of the woman's husband. Though it is known that the woman in her 'periods' had connection with several men of the same caste, it may not be known definitely by which particular individual the son is begotten; though there is no suspicion of the man being of a lower caste.—The son belongs to the man of whose wife he has been born.—(*Sarvajñanārāyaṇa.*)

When a son is born to a womon living in the house of the husband,—begotten by another man, with regard to whom it is definitely known that he is a person belonging to the same caste, but it is not known who the particular individual is,—this son, being secretly born in the man's house belongs to that man of whose wife he has been born—(*Kullūka.*)

'Gṛhē,' of one's own wife.—That son being born secretly in the house, belongs to the man of whose wife he has been born.—(*Rāghavānanda.*)

The particle *'iti'* is understood after *'kasya saḥ.'*—(*Nandana.*)

The son would belong to the man of whose wife he is born. This son, born secretly in the house, is called the 'secretly born son.'—(*Rāmachandra.*)

'Talpajaḥ,' born of the wife. Inasmuch as the 'owner of the seed' is not known, the son would belong to the same caste as the mother. This would be so only in cases where there is no suspicion regarding the progenitor belonging to a lower caste; in a case where there is such a suspicion, the son might be a product of 'the admixture of castes in the reverse order,' and as such, of no use to the father.—(*Vivādaratnākara*, p. 566)

'Na cha jñāyēta, etc'—*i.e.*, though it is not known by which particular individual he has been begotten, yet it is known that he has been begotten by a man of the same caste.—(*Vīramitrodaya*, p. 606.)

(5) MAIDEN-BORN

120. याज्ञवल्क्य 2. 129.] कानीनः कन्यकाजातो मातामहसुतः स्मृतः ॥

That born of a maiden is the *Maiden-born Son*; and he belongs to his mother's father.—(*Yājñavalkya*, 2. 129.) [Quoted in *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

NOTES

The progenitor being unknown, the son would belong to the same caste as his mother.—(*Vishvarūpa.*)

The son that is born of a maiden before she has been married is called the 'maiden-born son' of his mother's father, such being the opinion of Manu and others.—This son has been mentioned after the "secretly born son' because he also is born of the man's daughter who may be somehow regarded as 'soil belonging to the father,—and is to that extent similar to the 'secretly born son.'—(*Aparārka.*)

The *Kānīna* is born of a maiden, begotten by a man of the same caste; and he belongs to his mother's father. [The term '*Kanyakā*,' 'maiden,' here does not stand necessarily for an *unmarried* girl; it stands for a girl who has not had previous intercourse with a man; so that the 'maiden-born son' would be 'one born of a girl who has not had connection with her legally married husband'; hence the following remark –*Bālambhaṭṭī*.] –This would be the case (*i.e.*, the son would belong to the mother's father) only if she is unmarried and living in her father's house; if, on the other hand, she has been married (but has had no connection with her husband), then the son belongs to her married husband. This has been clearly declared by Manu (9. 172). –(*Mitākṣarā*, pp. 691-692.)

The son born of a maiden is the *Kānīna*; he is the son of his mother's father, as declared by Viṣṇu – '*Putrī mātāmahastāna, etc.*' In the event of there being no child born to the man who marries her, the said son shall belong to that man also.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

The son begotten on a maiden by a man of the same caste is the 'maiden-born son.' He is the son of his mother's father, in case she is unmarried and staying in the father's house; in case she is married, the son shall belong to the man who has married her; as declared by Manu.—(*Madanapārijāta*, pp. 651-652.)

The 'maiden-born' son is one born of an unmarried girl, from a man of the same caste; he belongs to the father of the girl. If the girl has been married, then the said son would be the 'secretly born son' of her husband; as declared by Manu (9. 172).—What these texts mean is that the 'maiden-born son' is one who is born of an *unmarried* girl while staying in her father's house, from a paramour of the same caste, and belongs to his mother's father; but this is contrary to what is asserted in the *Brahmapurāṇa*. –'The son that is born of an unmarried girl, from a man of the same caste, in her father's house, is the maiden-born son of the man to whom she becomes married';—also *Nārada*—'The maiden-born. . . is the son of the man who marries the maiden.'—Now, as regards the statement that 'the son born of an unmarried girl from a paramour of the same caste, in her father's house, is the maiden-born son,'—there is no inconsistency between the two sets of texts; but there is clearly an inconsistency in regard to the statement that 'the son belongs to the man who marries the girl' [the other texts declare that he belongs to the mother's father], while both Manu and Nārada declare that he belongs to the man who marries the girl, and not to the mother's father. –The author of the *Mitākṣarā* has sought to reconcile the two sets of texts by the remark that 'if the son has been born of an unmarried girl, he belongs to the mother's father, while if he has been born of a married girl, he belongs to the man who has married her.'—But this is not satisfactory; because in the latter case, inasmuch as the son would not be born of an *unmarried* girl, who alone could be

spoken of as '*Kanyā*,' 'maiden,'—he could not be spoken of as '*maiden-born*. The term '*Kanyā*,' 'maiden,' cannot here stand for *daughter in general*; as in that case there would be nothing to differentiate the 'maiden-born' from the 'secretly-born' or the 'one obtained with the wife'; because every girl would be the 'daughter' of some person or the other. In any case the inconsistency with the text oft he *Brahmapurāṇa* would be irreconcilable; as it speaks definitely of the '*unmarried*' maiden; equally irreconcilable would be the inconsistency with Manu's text.—The author of the *Kalpataru* has only quoted the two sets of texts and has not attempted a reconciliation between the two contending views. There are texts of (*a*) Vasiṣṭha—'*Kānīnaḥpañchamaḥ, etc.*,'—(*b*) of Nārada—'*Ajñātapitṛko yastu, etc.*,'—and (*c*) of Baudhāyana—'*Asamskṛtāmanatisṛṣṭām, etc.*'—Our explanation is as follows: All those that speak of the 'maiden-born son' belonging to the mother's father refer to cases where a man of the same caste has begotten the son on a girl who has not been given away at all; while those who speak of the son belonging to the husband refer to cases where the son is born of the paramour of the same caste after the girl has been given away verbally (betrothed), but has not quite attained the status of *wife-hood* which is brought about only when all the marriage-rites ending with the 'seven steps' have been completed.—In the passage from *Mitākṣarā* also (see above) the term '*anūḍhā*' (unmarried) means 'whose marriage-rites have not yet commenced,' and '*ūḍhā*' (married) means 'whose marriage-rites have commenced.' If the son were born *after the completion of the marriage-rites*, from a paramour of the same caste, he would be a 'secretly born son' (and not a 'maiden-born son').—(*Vīramitrodaya*, pp. 606—608.)

121. मनु 9. 172.] पितृवेश्मनि कन्या तु यं पुत्रं जनयेद् रहः ।
तं कानीनं वदेन्नाम्ना वोढुः कन्यासमुद्भवम् ॥

If a maiden secretly bears a son in her father's house, that son, born of a maiden, is declared to be *maiden-born* by name, and to belong to the man who marries her.—(*Manu*, 9. 172.) [Quoted in *Aparārka*, p. 736; *Mitākṣarā*, p. 692; *Madanapārijāta*, p. 652; *Vīramitrodaya*, pp. 606, 608.]

NOTES

There are three kinds of 'maidens': -(1) one who has had no sexual intercourse with a male, (2) one who has dedicated herself to life-long service in temples, and (3) one who is still quite young. . . . In the present treatise, the term is used in the sense of 'one who has had no sexual intercourse with a male.' It will not be right to take the word to stand for 'one for whom the marriage sacrament has not been performed.' . . . As regards the son called 'maiden-born,' the very name indicates that the girl is still under her father and is devoid of the sacramental rite of marriage. If the name 'maiden-born' were

applied to the child *not born of lawful wedlock*, then the son of the *married* woman also, begotten by a man other than the husband, would be 'maiden-born.' On the other hand, if the name indicated only the *ownership of the father*, then the son of the Appointed Daughter also would come to be called 'maiden-born'. . . The meaning of the present text ('*Pitṛvēshmani, etc.*') is as follows:—If the son fulfils the conditions herein stated he shall be treated in this treatise as *maiden-born*; and the question arising as to the person to whom such a son belongs, the text adds that the son born of the maiden belongs to the man who marries her.—Or the text may be taken, not as defining the particular kind of son, but simply as declaring his *relationship*; the sense being that 'the maiden-born son should be regarded as related to the person who marries the girl'; so that the whole verse forms one connected sentence. The idea therefore that the present text supplies the definition of the 'maiden-born son' should be discarded.—Others have held that what is meant is that the name 'maiden-born' is not applied to every child of an unmarried 'maiden,' it applies only to such a child as has been defined by Manu.—(*Medhātithi* on 9. 135.)

'*Voḍhuḥ*,'—of the person who marries her.—This son inherits the property of his mother's father also, if this latter has no son; Yājñavalkya having declared him to be 'the son of his mother's father.'—This is also only in cases where the son is known to have been begotten by a man of the same or a higher caste.—(*Sarvajñanārāyaṇa.*)

That son whom the maiden in her father's house brings forth secretly,—should be known as the son of the man who marries that maiden, and as bearing the name 'maiden-born.'—(*Kullūka.*)

'*Voḍhuḥ*,'—of the man who marries the girl who has given birth to a son during maidenhood. Yājñavalkya's words that 'the maiden-born son belongs to the mother's fathers' means that if the grandfather has no son, his grandson inherits his property; and hence they are not inconsistent with the words of Manu.—(*Rāghavānanda.*)

The son is regarded as the son of the person who marries the girl, not of the girl's father.—(*Nandana.*)

The son born of the maiden should be regarded as belonging to the person who marries the girl.—(*Rāmachandra.*)

The sense is that the son born of a maiden before marriage belongs to the man who marries her.—(*Aparārka*, p. 736.)

The meaning is that if the girl has given birth to the son *after* she has been married (but before she has had connection with her husband), then the son belongs to her husband.—(*Mitākṣarā.*)

The implication of the term '*Voḍhuḥ*' is that if the girl is one that has been married, then the son belongs to her husband,—if she is unmarried, the son belongs to the mother's father.—(*Madanapārijāta*, p. 652.)

If the girl,—who has been given away verbally, but who has not completed all the marital rites and hence has not attained the position of the 'wife' of the person to whom she has been given away,—gives birth to a son, that should be known as 'maiden-born' by name, and as belonging to the man who has married the girl; it is in this sense that the phrase 'in the father's house' becomes justified; for immediately after the *completion* of the marriage, the girl enters the house of her husband.—(*Vīramitrodaya*, p. 608.)

122. नारद]. कानीनश्च सहोढश्च गूढायां यश्च जायते ।
तेषां वोढा पिता ज्ञेयस्ते च भागहराः स्मृताः ॥

The *maiden-born, one obtained with the wife*, and the *secretly born*,—the man who marries the woman is to be regarded as the father of these; and they have been declared to be sharers in the property.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 565; *Vīramitrodaya*, p. 606.]

NOTES

If the woman's father has no son of his own, then the 'maiden-born son' and the 'son obtained with the wife' belong to him; if he has a son of his own, then they belong to the man who marries the woman;—if both (the woman's father and her husband) have no other sons, then the said two kinds of sons belong to both of them;—so says the *Pārijāta*.—(*Vivādaratnākara*, p. 565.)

123. बौधायन] असंस्कृतामनतिसृष्टां यामुपगच्छेत् तस्यां यो जातः स कानीनः ।

If a man has intercourse with a girl who has been married and who has not been given away, the son that is born to her is the maiden-born son.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 565.]

NOTES

'*Asamskṛtā*'—for whom the marriage-sacrament has not been performed;—'*anatisṛṣṭā*,' she who has not been given away.—(*Vivādaratnākara*, p. 565.)

124. वसिष्ठः] कानीनः पञ्चमः । यं पितृगृहेऽसंस्कृता कामादुत्पादयेत् स कानीनो मातामहसुतो भवतीत्याहुः । अत्राप्युदाहरन्ति—अप्रदत्ता सुता [*v.l.*, अप्रदत्ता दुहिता] यस्य पुत्रं विन्देत तुल्यतः पुत्री मातामहस्तेन दद्यात् पिण्डं हरेद्धनम् ॥

The maiden-born is the fifth (kind of son).—If an unmarried woman brings forth, through carnal lust, a son, in her father's house,—they say that son is the *maiden-born* son of his mother's father.—In this connection they quote the following saying:— "If a maiden, who has not been given away, obtains a son from a man of an equal status,—that son

becomes a son to his mother's father; he shall offer the cake to him and inherit his property."—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, pp. 564-565; *Aparārka*, p. 736; *Vīramitrodaya*, p. 607.]

NOTES

'*Kāmāt*,' through free love;—'*apradattā*,' for whom the marriage-sacrament has not been performed.—'*Tulyataḥ*,' '*of equal status*,' from a man of the same caste as herself.—(*Vivādaratnākara*, p. 565.)

'*Apradattā*,' 'unmarried,' stands here for the girl who has not been even verbally betrothed. This epithet indicates that when the maiden's son is born to the girl after her betrothal—but before marriage—he belongs to the man who marries her. This is also what is meant by Manu's text—'*Pitṛvēshmani kanyā tu, etc.*' (121, above)—(*Aparārka*, p. 786.)

125. ब्रह्मपुराण] अदत्तायां तु यो जातः सवर्णेन पितुर्गृहे ।
स कानीनः सुतस्तस्मै यस्मै सा दीयते पुनः ॥

If a son is born to an unmarried girl in her father's house, from a man of the same caste, that is, the *maiden-born* son of the man who marries the girl subsequently.—(*Brahmapurāṇa.*) [Quoted in *Vivādaratnākara*, p. 565; *Vīramitrodaya*, p. 606.]

126. नारद] अज्ञातपितृको यस्तु कानीनो मूढमातृकः ।
मातामहस्य दद्यात् स पिण्डं रिक्थं हरेत्ततः ॥

The maiden-born son of a foolish mother, and an unknown father, shall offer the cake to, and then take the property of, his mother's father.—(*Nārada.*) [Quoted in *Vīramitrodaya*, p. 607.]

(6) BORN OF A REMARRIED WOMAN

127. कात्यायन] क्लीबं विहाय पतितं या पुनर्लभते पतिम् ।
तस्यां पौनर्भवो जातो व्यक्तमुत्पादकस्य सः ॥

When a woman, having abandoned her husband who is impotent or an outcast, takes another husband,—the son born to her is called *Paunarbhava*, Born of a Remarried Woman; and he clearly belongs to his progenitor.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 564; *Vīramitrodaya*, p. 608.]

128. वसिष्ठ = विष्णु] पौनर्भवश्चतुर्थः ।

The *Paunarbhava* is the fourth (kind of son). - (*Vasiṣṭha* and *Viṣṇu*.) [Quoted in *Vīramitrodaya*, p. 608; *Vivādaratnākara*, p. 565.]

NOTES

'*Fourth*'—in accordance with order in which the sons have been enumerated in these two *Smṛtis*.- (*Vīramitrodaya*, p. 608)

129. मनु 9.175-176.] या तु पत्या परित्यक्ता विधवा वा स्वयेच्छया ।
उत्पादयेत् पुनर्भूत्वा स पौनर्भव उच्यते ॥
सा चेदक्षतयोनिः स्यात् गतप्रत्यागताऽपि वा ।
पौनर्भवेन भर्त्रा सा पुनः संस्कारमर्हति ॥

If a woman, abandoned by her husband, or a widow, of her own accord, marries again and bears a son, that son is called the *Son of a Remarried Woman*. In case she be still a virgin, or having gone away comes back, she is fit to undergo remarriage with her second husband.—(*Manu*, 9. 175-176.) [Quoted in *Vivādaratnākara*, p. 563; *Vīramitrodaya*, p. 608.]

NOTES

'*Punarbhūtvā*,'—having become the wife of another man. The second verse lays down the procedure of Remarriage.—'*Virgin*,' *i.e.*, abandoned by the husband immediately after the performance of the marriage-ceremonies, or widowed immediately after the ceremonies;—'*having gone away comes back*,'—is the girl who has been betrothed by her father to one man, but has of her own accord gone over to another man and married him, and then returns again to the husband chosen for her by her father,—*while still a virgin*.—'*Second husband*,'—she is fit to undergo remarriage with the man to whom she has gone finally. From this it follows that if the woman does not retain her virginity, she is not fit to undergo remarriage; though, of course, in either case she would be a '*Punarbhū*,' 'a remarried woman.'—The son born to such a woman is called '*Paunarbhava*' and he belongs to the owner of the seed.—(*Sarvajñanārāyaṇa*.)

The woman who has been abandoned by her husband, or the woman whose husband is dead;—if either of these, on her own accord, becomes the wife of another man, and bears a son,—that son is the *Paunarbhava* son of the progenitor.—If the aforesaid woman is a 'virgin' and betakes herself to another man, she is fit for undergoing the marriage-sacrament with that man. Or, if a woman, having given up her first husband, has gone to the second man, and again comes back to the first husband, then she has to undergo the marriage-ceremonies over again with her first husband.—(*Kullūka*.)

If a woman, of her own accord, becomes the wife of another man, then returns to her first husband and then becomes a widow,—and then bears a son, that is, the *Paunarbhava* son and belongs to the progenitor.—The woman has abandoned her first husband in his boyhood, and returns to him when he has attained youth,—both of these men would be her '*Punarbhū*,' Remarried, husbands; and with either of these it is necessary to go through the marriage-ceremonies.—The particle '*vā*' is meant to include the *non-virgin* also,—*i e.*, one who has passed her puberty. That both the virgin and the non-virgin are meant here is clearly stated by *Yājñavalkya* in the text—'*Akṣatā vā kṣatā vāpi, etc.*'—For abandoning her husband, a woman is to be devoured by dogs only when she does it through arrogance born of the influence of her relatives,—not when she does it through lust.—(*Rāghavānanda.*)

'*Punarbhūtvā*,'- again becoming the wife of some one else.—The fitness for remarriage has been asserted in regard to the woman who retains her 'virginity'; '*gatapratyāgatā*,'—*i.e.*, who retains her virginity even though she has gone to and returned from her husband's house.—'*Paunarbhavēna bhartrā*,'—*i.e.*, with a bridegroom who is himself a *Punarbhu* son of his father.—(*Nandana.*)

'*Punarbhūtvā*,'—becoming the wife of another man of the same caste.—The said remarried woman, if still a 'virgin,'—even though she has gone to, and returned, from her husband's house, etc., etc.—(*Rāmachandra.*)

'*Bears*,'—*i.e.*, from a man of the same caste.—'*Punarbhūtvā*,'—having remarried herself to another man.—(*Vivādaratnākara*, pp. 563-564.)

The '*Punarbhū*,' 'Remarried Woman,' is of two kinds—(1) one who is remarried after having merely gone through the form of the marriage and still retaining her virginity; and (2) one who is married after having been defiled, even before marriage, by carnal intercourse with men. That is why *Yājña-valkya* has said '*Akṣatāyām kṣatāyām vā, etc.*' (below).—(*Vīramitrodaya*, p. 608.)

130. याज्ञवल्क्य 2.130.] अक्षतायां क्षतायां वा जातः पौनर्भवः सुतः ॥

That son is called *Paunarbhava*, the Son of a Remarried Woman, who has been born of a woman who, retaining her virginity or otherwise, has been married again.—(*Yājña-valkya*, 2. 130.) [Quoted in *Vivādaratnākara*, p. 564; *Madana-pārijāta*, p. 650; *Vīramitrodaya*, pp. 596 – 608.]

NOTES

See also Chapter III, Sec. 71.

If, on the death of the husband, the woman still retains her virginity and is married again to another man, the son born to her is called '*Paunar-bhava*';—also when the woman has lost her virginity before remarriage.—(*Vishvarūpa.*)

'*Akṣatāyām*,'—*i.e.*, from the wife of a man who is impotent or suffering from some disability, who, on that account still retains her virginity, and who

has been widowed,—or from a woman who has been married after having enjoyed carnal intercourse, and still has her husband living,—if a son is born, he is called '*Paunarbhava.*'—The '*Punarbhū*' has been defined as—'the woman who is remarried, whether a virgin or non-virgin.'—(*Yājñavalkya*, 1. 68.) These six kinds of sons have been mentioned first because they are all born of a "soil" which is in some way or other related to their 'father.' The remaining six not being so born, are mentioned last.—(*Aparārka.*)

The '*Paunarbhava*' son is that born of a woman who, either a virgin or non-virgin, has been remarried,—from a man of the same caste. (*Mitākṣarā.*)

'*Punarbhū* is the woman who has been remarried; when a son is born of such a remarried woman,—who has either lost her virginity by having had intercourse with her first husband, or still retains her virginity by reason of *not* having had intercourse with her first husband, that son is called '*Paunarbhava*'; and this son belongs to the progenitor, as clearly stated by Kātyāyana—'*Tasyām paunarbhavo jāto vyaktamutpādakasya saḥ*'. (Sec. 127, above)—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

The '*Punarbhū*,' Remarried woman, is of two kinds—(*a*) one who has lost her virginity before remarriage, and (*b*) who still retains her virginity.—The son born of either of these from a man of the same caste is called '*Paunarbhava.*'—(*Madanapārijāta*, p. 652.)

The Remarried Woman is of two kinds—(1) one who has been married only formally and still retains her virginity, and (2) who has been married after having been already defiled by carnal intercourse.—The son born of either of these is called '*Paunarbhava.*'—(*Vīramitrodaya*, p. 608.)

(7) ADOPTED

131. याज्ञवल्क्य 2. 130.] दद्यान्माता पिता वा यं स पुत्रो दत्तको भवेत् ।

That son whom his mother or father gives away is the *Dattaka, Given Away*, (Adopted) Son.—(*Yājñavalkya*, 2. 130.) [Quoted in *Vīramitrodaya*, p. 596; *Madanapārijāta*, p. 650.]

NOTES

The boy given away by both the parents, or by the father alone, or by the mother with the permission of the father,—is the *Dattaka* (Adopted) Son. *Vasiṣṭha* has declared—'The woman cannot give away or adopt, except with the permission of her husband.' Thus the *Dattaka* son is one given away by the parents in the lawful manner.—(*Vishvarūpa.*)

The boy who is given away by his parents,—or by the father alone, or by the mother with the permission of the father,—is the *Dattaka* (Adopted) Son of the person to whom he has been given.—(*Aparārka.*)—Among the secondary sons, it is only the Adopted Son that is permissible in the present age,—Shaunaka's text having forbidden, for the present age, all the sons except the *Dattaka* and the *Aurasa.*—(*Ibid.*, p. 739.)

When a boy is given away, either by the mother, with the father's permission or (even without such permission) when the father is away or dead,—or by the father or by both the parents—to a man of the same caste, that boy is the *Dattaka* Son of that man; as has been declared by Manu (9. 168). Inasmuch as Manu has added the word *'āpadi,'* 'in distress,' it follows that a son should not be given away except in times of distress.—Similarly, if a boy is the only son of his parents, he should not be given away (for adoption); Vasiṣṭha (15. 3) having prohibited the giving away as well as the adopting of an only son.—Even when there are several sons, the eldest should not be given away; because according to Manu (9. 106) it is on the eldest that the duties of the son primarily devolve.—The procedure of adopting has been laid down by Vasiṣṭha (15. 6), as follows:—'When going to adopt a son, the man should invite his relations, and intimate his intention to the king; then having poured libations into the fire in the middle of his house with the *Vyāhṛtis,* and then, in the presence of his own relatives, he should adopt the boy *whose relatives may not be far off'*;—this last qualification being meant to exclude a boy that may be the native of far-off lands or speaking a totally different language.—This same procedure is to be adopted in the case of the 'Purchased,' 'Self-surrendered' and the 'Appointed' Sons; as the conditions are similar in the case of all these.—(*Mitākṣarā.*)—[On this the *Bālambhaṭṭī* has the following notes:—The mother has the right to give away the son only when the father is not there; this absence of the father can be due to his being abroad—in which case she can do it only with his consent,—or to his having died (in which case she is free to make the gift). The chief course is that the boy should be given away by the father. In fact, if both the parents are alive, the father also can make the gift only with the mother's consent; but in the event of the emergency being exceptionally urgent, the father may do it even without the mother's consent.—When the *Mitākṣarā* adds the alternative of the son being given away by '*both parents,*' it is in accordance with verb '*dadyātām*' in the dual number that occurs in Manu's text.—The *adopter* also should be of the same caste.—The conclusion is—(*a*) if the father is absent or abroad, the mother can give away the son only if she has the father's consent;—(*b*) if the father is dead, or if the emergency is specially urgent, the mother may do it by herself;—(*c*) if the mother is dead or insane or otherwise disabled, the father may do it by himself;—(*d*) if the mother is fit and alive, present in the house, the father can do it only with her consent;—(*e*) if the emergency is specially urgent, the father can do it by himself;—(*f*) in general and in all cases the boy should be given away by both the parents jointly.—The woman also is entitled to adopt, just as she is entitled to give away for adoption; the only difference is that in her case there are no libations into the fire.—The 'distress' or 'emergency' meant in this connection is such as famine and the like, and not 'the absence of a son' of the *adopter*; . . .—'*Whose relatives may not be far off,*' whose father and other relatives are present, not very for off; as also one whose parentage and character are well known.]

When the father, or the mother—when the father is absent, or with the father's consent,—gives away a son affectionately, with water-libations, to another person, that son is the *Dattaka* Son of that person.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

The *Dattaka* Son should be of the same caste as the adoptive father, as is clear from the epithet '*sadṛsham*' in the text of Manu (9. 168).—The mother can give away the son only if the husband is abroad, or there is 'distress' in the shape of the father's death; similarly, the father can give away the son only if the mother is dead, or there is 'distress' in the shape of the mother suffering from such disabilities as insanity and the like;—in all other cases the boy can be given away only by both jointly.—Since Manu has added the word '*āpadi*' it follows that a son shall not be given away under normal circumstances. If he is given at any time except the most abnormal time of distress, the sin of it lies with the *giver* not with the *adopter*.—(*Madanapārijāta*, p. 652.)

That boy whom the father,—or the mother with the father's permission,—gives away to another man is that man's *Dattaka Son*; as says Manu (9. 168); also Vasiṣṭha. . . If the husband has died without having given his permission to his wife to adopt, she could do the adopting. (See under Manu, Sec. 134 below, for fuller discussion).—(*Vīramitrodaya*, pp. 609-610.)

132. विष्णु] दत्तश्चाष्टमः । स च मात्रा पित्रा वा यस्य दत्तः ।

The *Dattaka* is the eighth (kind of son); he belongs to the man to whom he has been given away by the mother or the father.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 567.]

NOTES

The word '*syāt*' (would belong to) has to be supplied.—(*Vivādaratnākara*, p. 567.)

133. वसिष्ठ 15. 6.] शुक्रशोणितसम्भवः पुत्रो मातापितृनिमित्तकः । तस्य दानविक्रयत्यागेषु मातापितरौ प्रभवतः । नत्वेकं पुत्रं दद्यात् प्रतिगृह्णीयाद्वा—स हि सन्तानाय पूर्वेषाम् । न तु स्त्री दद्यात् प्रतिगृह्णीयाद्वाऽन्यत्रानुज्ञानाद् भर्तुः । पुत्रं प्रतिग्रहीष्यन् बन्धूनाहूय राजनि चावेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वाऽदूरबान्धवं बन्धुसन्निकृष्ट [असन्निकृष्टम्] एव प्रतिगृह्णीयात् ॥ सन्देहे चोत्पन्ने दूरबान्धवं शूद्रमिव स्थापयेत् ।

The son, being the product of semen and ovule, has the Father and mother for his cause;—in the matter of being given away or sold or abandoned, the mother and father have full authority.—An only son shall not be given away, or accepted; as he serves the purpose of perpetuating the race

of his forefathers.—The woman shall not give, nor accept, a son, except with the permission of her husband. One who is going to adopt a son should invite his relatives and intimate it to the king ; then in the middle of his house he shall pour libations into the fire with the *Vyāhṛtimantras* and adopt the boy whose relatives may not be far off, *in the presence of his own relatives* [or, *v.l.*, the boy who has no relations]. If a doubt arises, and the boy's relations are not near at hand, the adopter shall keep him as a *Shūdrā-born* son.—(*Vasiṣṭha*, 15. 6.) [Quoted in *Mitākṣarā*, p. 694 ; *Madanapārijāta*, p. 652 ; *Vivādaratnākara*, pp. 568-569 ; *Vīramitrodaya*, p. 609 ; *Aparārka*, p. 737 ; *Vyavahāramayūkhā*, p. 113.]

NOTES

'*Adūrabāndhavam*' -This precludes the adoption of a boy who comes from a very remote country and who speaks a totally different language.—(*Mitākṣarā*, p. 696.)

'*An only son, etc.*'--Similarly, the eldest son also should not be given away or accepted.—'*Niveshanasya*'—Of his own house.—'*Adūrabāndhavam*'—This seems to preclude the adoption of a boy who belongs to a distant country and talks an entirely different language.—(*Madanapārijāta*, p. 653.)

Just as an only son should not be *given away*, so also he should not be sold or abandoned through inability to support him. If the line of the race is broken off, it results in the very serious difficulty that there is no one to offer the cake and water ; --so says the *Prakāsha*. --The father and the mother are both, jointly and severally, entitled to give away the son ; the only difference being that if the father is there, the mother can give away the son only with his permission ; while if the father is not there, she may do it even without his permission.—'*Invite his relatives*,' -*i e.*, bring together all his coparceners in order to secure the share of the adopted son in the property.—'*Adūrabāndhavam*,' whose maternal uncle and other relatives are close by ; this is necessary for the purpose of finding out the name, caste and other details regarding the boy. *If the boy has no relations, then the adoption may be done even without them ; the name, gotra and other details having been found out by other reliable means.* [This is the explanation of the reading '*asannikṛṣṭam*' in place of '*bandhusannikṛṣṭaḥ*'.]—'*If a doubt arises, etc.*' —If somehow one has adopted a boy whose relations are not near at hand, and later on a doubt arises as to the caste of the boy, then he should be kept like a 'Shūdrā-born son,'—*i.e.*, providing him with mere subsistence. In fact, one should adopt a boy only after he has assured himself with regard to his caste and other details.—(*Vivādaratnākara*, p. 569.)

'*Na strī dadyāt*'—The woman's right to adopt a son without her husband's permission has been denied here ; and on the basis of this some people have declared that this also precludes the widow's right to adopt ; so that if she does appoint a son, he cannot be her *Dattaka* Son.--This, however, is not right; because the having of a son is absolutely necessary for one's salvation and hence

it has to be done in any case. The 'permission of the husband' which has been declared to be necessary is meant for those cases where a man has several wives and while he has sons from other wives, one of his wives has no son and who wishes to adopt a son for herself. This she cannot do except with her husband's permission; specially because the sons of her co-wives being as good sons to her as any, it is not absolutely necessary for the childless wife to have recourse to adoption.—(*Vīramitrodaya*, p. 609.)

'*An only son should not be given away.*'—This prohibition applies to the selling of the son also.—Similarly, the procedure laid down should be followed in the case of the 'purchased' son also.—'*Adūrabāndhavam*,' one whose relatives are not far off; by the proximity of the boy's relations, the fact of his belonging to a good family can be found out; hence the meaning is that 'one shall adopt a boy whose ancestry is known;' the term '*adūrabāndhavam*' does not mean that the adopter should make the adoption in the presence of *his* relatives; as this is already stated in the previous direction regarding the 'inviting of his relatives.'—'*Asannikṛṣṭam*' (*v.l.*, for '*bandhusannikṛṣṭaḥ*)—*i.e.*, the boy who has no relations.—If any doubts arise regarding the boy's caste, he shall be kept apart, like a Shūdra, until his caste has been definitely ascertained. The sense is that a boy should be adopted only after his ancestry has been definitely ascertained, not otherwise.—(*Aparārka*, p. 738.)

[For notes from *Vyavahāramayūkha*, see under Shaunaka's Text ब्राह्मणानां सपिण्डेषु, *etc.*, 135, below.]

134. मनु 9. 168.] माता पिता वा दद्यातां यमद्भिः पुत्रमापदि ।
सदृशं प्रीतिसंयुक्तं [प्रीतिसंयुक्तौ] स ज्ञेयो दत्रिमः सुतः ॥

When in times of distress, the mother or the father affectionately gives away, with water-libations, a worthy son, that son is called "Given" (*Dattaka*, Adopted).—(*Manu*, 9. 168.) [Quoted in *Aparārka*, p. 736; *Mitākṣarā*, p. 694; *Madanapārijāta*, p. 652; *Vivādaratnākara*, p. 567; *Vīramitrodaya*, p. 608; *Vyavahāramayūkha*, p. 107.]

NOTES

It would be better to read '*cha*' or 'vā,' meaning 'the mother *and* the father'; the child belongs to both the parents and cannot be given away if either of them is unwilling. Or we may accept the reading '*vā*,' which would be in keeping with another text. When the father is spoken of as the more important of the two parents, it is in regard to other matters.—'*Sadṛsham*,' 'worthy';—this refers, not to *caste*, but to the presence qualifications in conformity with the family concerned; thus it is that the Brāhmaṇa may adopt a son of the Kṣattriya or other castes also.—'*Affectionately*'—This has been added with a view to preclude greed and such other motives for the giving away of the child.—(*Medhātithi*.)

'*Mother*,'—in the absence of the father.—'*Adbhiḥ*,' preceded by water-libations.—'*Āpadi*,' when the parents are themselves unable to support the child.—(*Sarvajñanārāyaṇa*.)

In accordance with the words of Vasiṣṭha—when the mother or the father, with mutual consent, gives away a son, who is of the same caste as the recipient, to another man,—in the time of 'distress' in the shape of that man having no child,—the gift being made 'affectionately'—and not through such motives as fear and the like,—and 'with water-libations,'—such a son should be known as the 'Adopted' Son.—(*Kullūka*.)

'*Āpadi*,'—when the recipient is in 'distress,' in the shape of having no child;—or when the giver himself is in 'distress,' in the shape of scarcity of food.—'*Sadṛsham*,' of the same *caste*.—'*Prītiyuktam*,' not through force or deceit.—(*Rāghavānanda*.)

'*Sadṛsham*,' of the same caste.—'*Āpadi*,'—this implies that the son given under other circumstances is of an inferior kind.—'*Prītisamyuktam*,'—this implies that if the son has been given through force or deceit, he is of an inferior kind. The '*distress*' meant here is that in the shape of the recipient having no child.—(*Nandana*.)

'*Adbhiḥ*.'—This stands for the entire procedure that has been prescribed in connection with the making of gifts.—*Āpadi*,' when there is famine or some such calamity; or when there is 'distress' for the recipient in the shape of his having no child.—'*Sadṛsham*,' of the same caste as the man who gives and the man who receives the boy.—'*Prītisamyuktau*' [*v.l*, for '*Prītisamyuktam*'], *i.e.*, not under the influence of fear, *etc*.—(*Aparārka*, p. 736.)

'*Āpadi*.'—This implies that sons should not be given away under normal circumstances. This prohibition is meant for the *giver*.—(*Mitākṣarā*, p. 694.)

'*Sadṛsham*,'—of the same caste.—The mother by herself is entitled to give away the son when the father is abroad or when there is a distress in the shape of the father's death; similarly, the father by himself is entitled to give when the mother is dead, or when there is distress in the shape of the mother suffering under such disabilities as insanity and the like. Under circumstances other than these they can give away the boy only conjointly.—'*Āpadi*'—This implies that a son should not be given away when there is no 'distress'; if he were given at such a time, the sin of it would lie with the giver, not with the receiver.—(*Madanapārijāta*, p. 652.)

'*Āpadi*,'—*i.e.*, when the recipient has no son.—'*Sadṛsham*,' of the same caste; according to Medhātithi, what is meant is not *caste*, but qualities in conformity with the family.—'*Prītisamyuktam*,'—*i.e*, free from fear and such feelings.—(*Vivādaratnākara*, p. 568.)

The 'Adopted' Son is one whom the mother—with the father's permission,—or the father—gives away to another man.—'*Āpadi*'—This means that if one gives away his boy under normal circumstances, he incurs sin.—The mother and the father may make the gift jointly or severally.—'*Adbhiḥ*'—This stands for the entire procedure laid down for the making and receiving of gifts.—'*Sadṛsham*,' of the same caste.—'*Prītisamyuktam*'—This is an adverb.—(*Vīramitrodaya*, p. 609.)

The particle '*vā*' indicates that the boy may be given away by the mother alone, in the absence of the father,—or by the father alone in the absence of the mother,—or by both when both are there.—The mention of '*distress*' implies that the boy should not be given away when there is no 'distress.' This prohibition is for the *giver*, not for the *receiver*, says Vijñāneshvara.—But this is not right.—'*Sadṛsham*,' in regard to family, qualities and other things, not in regard to *caste*; so that boys of the Kṣattriya and other castes also can be the 'adopted son,' of the Brāhmaṇa,—says Medhātithi. According to Kullūka, however, the boy must be of the same caste as the adoptive father;—and this is the correct view, on account of Yājñavalkya's concluding wards. This is made still clearer by the texts of Shaunaka which we are going to quote later on. Vijñāneshvara also holds the same view.—The eldest son should not be given away for adoption;—this prohibition also, according to Vijñāneshvara, is for the giver. But this is not right.—It is only a *boy*, never a *girl*, that can be 'adopted'; as is clearly indicated by the use of the masculine pronoun in Manu's text '*Sa jñeyo datrimaḥ sutaḥ*.'—[Then follows on pages 109-110, the detailed ritualistic procedure to be followed in *adoption*.]—(*Vyavahāramayūkha*, pp. 107—109.)

135. शौनक] (A) ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसङ्ग्रहः ।
तदभावेऽसपिण्डो वा, अन्यत्र तु न कारयेत् ॥
क्षत्रियाणां स्वजातौ वा गुरुगोत्रसमोऽपि वा ।
वैश्यानां वैश्यजातेषु, शूद्राणां शूद्रजातिषु ॥
सर्वेषामेव वर्णानां जातिष्वेव न चान्यतः ॥
(B) दौहित्रो भागिनेयश्च शूद्रस्यापि च दीयते ॥
(C) नैकपुत्रेण कर्तव्यं पुत्रदानं प्रयत्नतः ।

(A) Brāhmaṇas should adopt a son from among *Sapiṇḍas*; if no *Sapiṇḍa* is available, even a *non-Sapiṇḍa* may be taken; but never outside the pale of the caste.—Kṣattriyas may adopt from among their own caste, or one belonging to the same *gotra* as their preceptor;—Vaishyas shall adopt only from the Vaishya caste; and Shūdras only from the Shūdra caste.—Among all castes, adoption shall be made within the same caste, never from outside the caste.—(B) The daughter's son and the sister's son may be given for adoption by a Shūdra.—(C) The man having an only son shall not give away his son.—(*Shaunaka*.) [Quoted in *Vyavahāramayūkha*, pp. 110-111.]

NOTES

'The daughter's son, etc.'—What is meant is that *for the Shūdra,* the primary alternative is to adopt either the daughter's son or the sister's son,—and it is only when these are not available that any other boy of the same caste may be adopted...... Like the Shūdra, the woman also is entitled to adopt. . . The 'husband's permission' is necessary only in the case of the woman whose husband is living; as for the widow, she can adopt, even without the husband's permission, with the permission of her father, or, if the father is not living, of her *Jñātis.* (*Vyavahāramayūkha.*)

[As regards the persons to be adopted, *Vyavahāramayūkha* quotes Vasiṣṭha's text—'*Shukrashoṇitasambhavaḥ, etc.*' (133, above) and proceeds to explain its closing words as follows]—'*Adūrēbandhavam,*' *i.e.,* a closely related *Sapiṇḍa;* among these also, the brother's son should be the first choice, says the *Mitākṣarā.* [The '*durēbāndhava*' would be one belonging to a different caste.]—A man who has been married and has got sons may also be adopted;—such is the view of my father; and it is only right. According to the *Kālikāpurāṇa*—'(*a*) If all the sacraments from *Jātakarma* to *Chūḍākaraṇa* of the boy have been performed in the family of his birth, he cannot be adopted in another family;—(*b*) a boy becomes an adopted son if his *Chūḍākaraṇa* and other sacraments are performed in the family of adoption;—(*c*) a boy over five years of age cannot be adopted.'—But all these restrictions are meant for a case where the boy to be adopted belongs to a *gotra* other than that of his adoptive father. Nor is this text authoritative; as it is not found in two or three manuscripts of the *Kālikāpurāṇa.*—The 'Adopted Son' is of two kinds—(*a*) the *Pure,* and (*b*) the *Dvyāmuṣyāyaṇa;* if he has been given away without any conditions he is the *Pure Dattaka;* and if he has been given on the understanding that he shall be a 'son' to both (his *natural* and *adoptive* fathers), then he is the *Dvyāmuṣyāyaṇa Dattaka.* Of these the *Pure Dattaka* performs the *Shrāddha* of his adoptive father only.... and he also becomes altogether cut off from his uterine brothers, uncles and other relations. For this same reason when the son of an adopted son is performing the *Sapiṇḍīkaraṇa Shrāddha,* he does it with the ancestors of his father's adoptive father . .The *Dvyāmuṣyāyaṇa Dattaka,* on the other hand, shall offer the *Shrāddha* to, and inherit the property of, his *adoptive* father, and also his natural father only if they have no other son living.—In the event of their having a 'legitimate' son, the 'adopted' son shall not offer the *Shrāddha* to any of the two, and as for property, he shall receive only a fourth part of the share that has fallen to the 'legitimate' son of his *adoptive* father; as declared by Vasiṣṭha (15-1).—'If a legitimate son is born after a son has been adopted, the latter would be entitled to the quarter of a share'—In case neither of the two fathers has any legitimate son, the adopted son shall offer one *Shrāddha,* in common to both his fathers.—Some people have held the opinion that there can be no 'pure' *Dattaka;* as no texts speak of any 'understanding' between the two 'fathers,' it follows that all 'adopted' sons have two 'fathers,' *i.e.,* are '*dvyāmuṣyāyaṇa,*' and should offer *Shrāddha* to both.—This view, however, is open to objection; it is true that no texts have spoken of the 'pure' *Dattaka;* but in view of what has been stated in Manu, 9. 142, in regarding the adopted son not taking 'the

family-name or the property of his progenitor,'—which speaks of the cessation of all relationship between the two.—it cannot be denied that such an adopted son differs from the '*Dvyāmuṣyāyaṇa*,' for whom 'all relationships with the progenitor' do not cease. . . From this we can also deduce the fact that in the case of the '*Dvyāmuṣyāyaṇa*,' adopted son, there must be an understanding between the two 'fathers' regarding the son belonging to both. . . . A man can give away a son for adoption only when he has more than one son;—he cannot give away his eldest son. Only such persons can 'adopt' a son as have had no sons or whose sons have all died.—Women are entitled to adopt, but with the husband's permission, when the husband is alive, and with the permission of her father and other relatives, when the husband has died—*Shūdras* can adopt only their daughter's son or sister's son.—According to some people the person to be adopted must be a nearly related *Sapiṇḍa*, and in the absence of such *Sapiṇḍa* also a remotely related *Sapiṇḍa*, but never one belonging to a different caste.—[Further details of the religious ceremony accompanying the adoption are here added, on pages 120–122.]

136. ऐतरेय ब्राह्मण 7. 17.] स होवाच शुनःशेपः—स वै यथा नो ज्ञपय राजपुत्र तथा वद। यथैवाङ्गिरसः सन्नुपेयां तव पुत्रतामिति। स होवाच विश्वामित्रः—ज्येष्ठो मे त्वं पुत्राणां स्याः। स होवाच शुनःशेपः—सञ्ज्ञानानेषु वै ब्रूयात् सौहार्दाय मे श्रियै—यथाऽहं भरत ऋषभोपेयां तव पुत्रताम् इति। अथ ह विश्वामित्रः पुत्रानामन्त्रयामास—मधुच्छन्दाः शृणोत न ऋषभो रेणुरष्टकः ये के च भ्रातरःस्थ नास्मै ज्यैष्ठ्याय कल्पध्वम्।

Shunaḥshepa said to Vishvāmitra—"Oh king's son! You please tell me how, belonging to the *gotra* of Aṅgiras, I may become your son."—Vishvāmitra replied—"You shall be the senior-most among my sons."—Then said Shunaḥshepa—"May your sons agree to admit me to your sonship thereby becoming affectionate to me and help me to my prosperity."—Thereupon Vishvāmitra addressed his sons—"O! Madhuchchhandas, O! Ṛṣabha, O! Rēṇu, O! Aṣṭaka, my sons—Listen to what I say—All you brothers, please do not pose as senior to this boy"—(*Aitareya Āraṇyaka*, 7. 17.)

NOTES

This indicates that even though one may have many natural born sons, he may yet adopt a son of another *gotra*, if he happen to be endowed with high qualities.

[The same story occurs also in Shāṅkhyāyana Shrauta-Sūtra, 15, 17.]

137. ऋग्वेद 7.4, 7, 8.] परिषद्यं ह्यरणस्य रेक्णो नित्यस्य रायः पतयः स्याम ।
न शेषो अग्ने अन्यजातमस्त्यचेतानस्य मा पथो वि दुक्षः ॥
न हि ग्रभायारणः सुशेवोऽन्योदर्यो मनसा मंतवा उ ।
अधा चिदोकः पुनरित्स एत्या नो वाज्यभीषाळेतु नव्यः ॥

The foeman's treasure may be won with labour ; may we be masters of our own possessions.
Agni, no son is he who springs from others, lengthen not out the path-ways of the foolish.
Unwelcome for adoption is the stranger, one to be thought of as another's offspring,
Though grown familiar by continual presence—May our strongly hero come, freshly triumphant.
—(*Rgveda*, 7. 4, 7, 8)

NOTES

This condemns the practice of adopting or appointing sons.

(8) PURCHASED

138. मनु 9. 174.] क्रीणीयाद् यस्त्वपत्यार्थं मात्रापित्रोर्यमन्तिकात् ।
स क्रीतकः सुतस्तस्य सदृशोऽसदृशोऽपि वा ॥

If a man buys a boy, worthy or unworthy, from his mother and father with a view to making him his son,—that son is called *Krīta*, 'Purchased.'—(*Manu*, 9. 174.) [Quoted in *Madanapārijāta*, p. 653 ; *Vivādaratnākara*, p. 570 ; *Aparārka*, p. 738 ; *Mitākṣarā*, p. 696 ; *Vīramitrodaya*, p. 611.]

NOTES

Sadṛshaḥ asadṛshaḥ'—belonging to the same or to a lower caste — (*Sarvajñanārāyaṇa*.)

If one desiring a son buys a boy from his mother and father, that boy becomes his 'purchased son.' This boy may be equal or inferior to the purchaser, in regard to his qualifications ; and the '*sadṛsha-asadṛshaḥ*' here does not refer to caste. Yājñavalkya has spoken of all these sons as being of the same caste as the 'father'; and according to Manu also all, with the exception of the 'Purchased,' should be of the same caste as the 'father.'—(*Kullūka*.)

Sadṛshaḥ-asadṛshaḥ, ' – *i.e.*, qualified or not qualified; the '*asadṛshaḥ*' cannot refer to *caste*; as according to Yājñavalkya, all these sons should be of the same caste as the 'father.'–(*Rāghavānanda.*)

'*Antikāt*, ' – from. – (*Nandana.*)

This son belongs to the man who has paid the price. - '*Sādṛshaḥ*'— similar in qualities. – (*Rāmachandra.*)

If a boy, who is not the eldest son of his father, is sold by his parents – by one or the other or both, as explained before, – that boy, being of the same caste as the purchaser, is his 'Purchased' son.—'*Sadṛshaḥ-asadṛshaḥ*'— refers to qualifications, not to the caste. –(*Madanapārijāta*, p. 653.)

'*Sadṛshaḥ*'—belonging to the same caste;—'*asadṛshaḥ*,'—not belonging to the same caste; – such is the explanation of the *Pārijāta*. According to the author of the *Prakāsha*, however, even though the Smṛti-text permits the 'purchase' of an '*asadṛsha*' boy, a man of a low caste should not take up a boy of a higher caste; nor should one belonging to a high caste take up a boy of a lower caste.—The '*Sadṛshaḥ-asadṛshaḥ*' refers to qualifications, as among persons of the same caste, – says Medhātithi. – (*Vivādaratnākara*, p. 570)

'*Sadṛshaḥ-asadṛshaḥ* - in regard to qualifications, not caste. – (*Aparārka*, p. 735.)

This boy also should not be the eldest son of his parents, – he may be sold only in times of distress, - and he must be of the same caste as the purchaser. – '*Sadṛshaḥ-asadṛshaḥ*' must be taken as referring to qualifications, not to caste; because of the closing words of Yājñavalkya.—(*Mitākṣarā.*)

'*Sadṛshaḥ-asadṛshaḥ*'—This should be taken as referring to qualifications, and not to *caste*.—(*Vīramitrodaya*, p. 611.)

139. विष्णु] क्रीतश्च नवमः

The Purchased is the ninth (kind of son).—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 570.]

140. बौधायन] मातापित्रोर्हस्ताद्न्यतरस्य वा योऽपत्यार्थं गृह्यते स क्रीतः ।

The boy who is taken, for the purpose of being made a son, from his parents, or from either one of them, is his *Purchased* son.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 570.]

141. याज्ञवल्क्य 2. 131.] क्रीतस्तु ताभ्यां विक्रीतः ।

The purchased son is one who has been sold by the parents. – (*Yājñavalkya*, 2. 131.) [Quoted in *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

NOTES

One who is sold by his parents, who are entitled to sell him, for a price, is the 'Purchased Son' of the buyer.—The particle '*tu*' indicates that what has been said in regard to the 'Adopted Son' applies here also; so that the mother by herself does not possess the right to sell the boy.—(*Vishvarūpa.*)

That son is named 'Purchased' who has been sold by his mother and father.—(*Aparārka.*)

The 'Purchased Son' is one who has been sold by the parents, or by the father or by the mother. This son also, as before, should not be the eldest son of his parents,—he should be sold only in times of distress,—and he should be of the same caste as the purchaser.—(*Mitākṣarā.*)

The boy who has been sold by his parents becomes the 'Purchased Son' of the purchaser.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

(9) '*Kṛtrima*'—APPOINTED

142. मनु 9. 169.] सदृशं तु प्रकुर्याद्यं गुणदोषविचक्षणम् *v. l.*, [गुणदोष-विचक्षणः] ।
पुत्रं पुत्रगुणैर्युक्तं स विज्ञेयश्च कृत्रिमः ॥

When a man appoints a son who is worthy, capable of discerning right and wrong and endowed with filial virtues,—that son is to be known as *Kṛtrima*, 'Appointed.'—(*Manu*, 9. 169.) [Quoted in *Aparārka*, p. 738; *Vivādaratnākara*, p. 672; *Vīramitrodaya*, p. 611.]

NOTES

'*Sadṛsham*'—refers to *qualities*. Some people explain it as 'belonging to the same caste'; but if this had been meant by the author, the proper reading would have been '*Sajātīyam*,' in place of '*Sadṛshantu*'; and it has already been explained why the *sameness of caste* cannot be meant.—'*Capable of discerning, etc.*'—Some people have explained this to mean that no one shall be so 'appointed' until he has attained his majority; as until then he is not in a position to discern right and wrong, nor to understand his own position of the 'Appointed Son.'—(*Medhātithi.*)

'*Sadṛsham*,' belonging to the same caste.—'*Guṇadoṣavichakṣaṇam*,'—*i.e.*, a minor should not be adopted.—The 'appointment' is to be made by the addressing of the words 'You are my son.'—'*Putraguṇaiḥ*,' *i.e.*, younger age and so forth.—Some people read '*guṇadoṣavichakṣaṇaḥ*,' which, as qualifying the *appointer*, means that if he has 'appointed' the 'son' knowing that he is an outcast or has any such other defects,—then the 'appointment' is not valid.—(*Sarvajñanārāyaṇa.*)

When a man 'appoints' a son—(*a*) who belongs to the same caste as himself, who is cognisant of the righteousness of the act of offering *Shrāddha*

to his parents and of the unrighteousness of omitting to offer it, who is possessed of such filial virtues as being devoted to the parents and so forth,—that son is called the 'Appointed Son.'—(*Kullūka.*)

'*Putraguṇaiḥ*'—Such as learning, humility, faith in the offering of *Shrāddha* and so forth.—(*Rāghavānanda.*)

'*Putrāguṇaiḥ*'—serving the father and other elders.—(*Rāmachandra.*)

Here '*Sadṛsham*' refers to *caste.*—(*Aparārka.*)

'*Sadṛsham*'—of similar qualifications—says Medhātithi.—'*Guṇadoṣa, etc.,*' knowing the '*guṇa*' or *righteousness* of performing the after-death rites for the parents, and the '*doṣa*' or *unrighteousness* of omitting to perform those rites.—'*Putraguṇa*' are services and the like.—(*Vivādaratnākara,* p. 572.)

'*Sadṛsham,*'—of the same caste.—(*Vīramitrodaya,* p. 611.)

143. याज्ञवल्क्य 2. 131.] कृत्रिमः स्यात् स्वयंकृतः ।

He who is appointed by oneself is the *Appointed Son.* (*Yājñavalkya,* 2. 131.) [Quoted in *Vivādaratnākara,* p. 573; *Madanapārijāta,* p. 650; *Vīramitrodaya,* p. 596.]

NOTES

When a boy, without father or mother, is taken up by a man as his son, he is his 'Appointed Son.'—(*Vishvarūpa.*)

When a man tells a person 'you be my son,' this latter is his 'Appointed Son.'—(*Aparārka.*)

When a man, desirous of having a son, makes an orphan his son by tempting him with his wealth and lands,—that is his 'Appointed Son.' He must be an orphan; as if either of his parents is alive, he is not free (to go as another man's son). [He must be one who has attained majority—adds the *Bālambhaṭṭī.*]—(*Mitākṣarā.*)

When the man makes a request to the other person, saying 'Please be my son,'—and the other is made to accede to the request, saying—'I am your son,'—he is the 'Appointed Son.'—This 'appointment' should be done with the consent of the natural father of the person appointed; because so long as the father is there, his son is under his authority.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

When a man desiring a son tempts an orphan of the same caste and makes him his son, he is the 'Appointed Son' of that man—(*Madanapārijāta,* p. 653.)

When a man desiring a son tempts a person of the same caste by showing him his wealth, etc., and requests him to become his son—saying 'Be my son,'—that is his 'Appointed Son'; but only if his father and mother are dead; because so long as they are alive, their son is under their control and cannot become the son of any other person.—(*Vīramitrodaya,* p. 611.)

144. बौधायन] सदृशं सकामं यं कुर्यात् स कृत्रिमः ।

When a man appoints a person of the same caste, who is willing,—he is his Appointed Son.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 572.]

NOTES

'*Sakāmam*,'—one with desire, *i.e.*, who thinks 'I shall be his son if he will have me';—'*Sadṛsham*,' of the same caste.—(*Vivādaratnākara*, p. 573.)

(10) '*Svayandatta*—SELF-OFFERED'

145. विष्णु] स्वयं चोपागतो दशमः ।

The *Self-offered* is the tenth (kind of son).—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 570.]

NOTES

He belongs to the man to whom he has offered himself.—(*Vivādaratnākara*, p. 571.)

146. मनु 9. 177.] मातापितृविहीनो यस्त्यक्तो वा स्यादकारणात् ।
आत्मानं स्पर्शयेद् यस्तु स्वयन्दत्तस्तु स स्मृतः ॥

If a boy, being deprived of his parents, or being abandoned without cause, offer himself to a man,—he is declared to be his "Self-offered Son."—(*Manu*, 9. 177.) [Quoted in *Aparārka*, p. 738; *Vivādaratnākara*, p. 571; *Vīramitrodaya*, p. 571.]

NOTES

'*Without cause*'—without any such cause as the boy having become an 'outcast' and the like.—'*Sparshayēt*,' gives himself—with water-libations. The 'Appointed Son' is merely taken up, while the 'Self-offered' son is accepted as a perpetuator of the line of descent.—(*Sarvajñanārāyaṇa.*)

When a boy's parents have died,—or he has been abandoned by them without any cause for such abandonment, simply through hatred or some such reason,—and he offers himself to a man, he becomes the 'self-offered' son of that man; as has been declared by Manu and others.—(*Kullūka.*)

'*Without cause*'—such as being an 'outcast' and the like.—'*Sparshayēt*,' should offer.—"*Abandoned*'—by the parents.—He is the son of that man to whom he has offered himself.—(*Rāghavānanda.*)

'*Sparshayēt*'—should offer.—(*Nandana.*)

A boy without parents, or abandoned by them without cause,—who has offered himself to a man,—is the 'self-offered' son of that man.—(*Rāmachandra.*)

The 'cause' for 'abandoning' would be 'being an outcast' and the like.—'*Sparshayēt,*' should offer himself.—(*Aparārka*, p. 738.)

'*Akāraṇāt,*'—without any fault.—'*Ātmānam sparshayēt,*' offers himself, saying 'I am your son.'—(*Vivādaratnākara*, p. 571.)

'*Akāraṇāt,*'—without any such cause as being an 'outcast' and the like;—'*abandoned by the parents,*' who are unable to support him on account of scarcity,—and hence become his own master.—(*Vīramitrodaya*, p. 612.)

147. याज्ञवल्क्य 2. 131.] दत्तात्मा तु स्वयंदत्तः ।

One who has offered himself is the *Self-offered Son.*—(*Yājñavalkya*, 2. 131.) [Quoted in *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

NOTES

One who has given himself away is the 'Self-offered' son. The 'Adopted' and the following sons should belong to the same caste as the 'father.'—(*Vishvarūpa.*)

The boy who, without being requested, offers himself to a man—saying 'I am your son,'—that is, the son called 'self-offered.'—(*Aparārka.*)

The 'Self-offered' son is that boy who, being without father and mother,—or abandoned by them—approaches a man and offers himself, saying 'I am your son.'—(*Mitākṣarā.*)

When one, without being asked, offers himself,—being an orphan, or abandoned by his parents,—to a man, is the 'self-offered son' of the man who accepts his offer.—(*Vīramitrodaya-Ṭikā* on Yājñavalkya.)

If one who has no father or mother,—or who has been abandoned by them,—comes up to a man and offers himself, saying 'I shall be your son,'—is the 'self-offered' son. He also must belong to the same caste as the man receiving him.—(*Madanapārijāta*, p. 658.)

One who offers himself to another man belonging to the same caste as himself, saying 'I shall be your son,'—having approached the man himself,—being an orphan, or abandoned by them,—is called the 'self-offered' son.—(*Vīramitrodaya*, p. 612.)

(11) '*Sahoḍha*'—OBTAINED WITH THE WIFE

148. विष्णु] सहोढः सप्तमः—गर्भिणी या संस्क्रियते तस्याः पुत्रः ।
स तु पाणिग्राहस्य ।

The boy 'obtained with the wife' is the seventh (kind of son); he is the son born of a girl married while pregnant; he belongs to the man who espouses the girl.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p 567; *Vīramitrodaya*, p. 612.]

NOTES

The author of the *Prakāsha*,—having raised the question that the pregnant girl cannot be a 'maiden,' and all the marriage-*mantras* being applicable to *maidens* only, so that there could be no 'marriage' of the pregnant girl,—has answered it by pointing out that there is some sort of a 're-marriage-rite' prescribed in the *Ātharvaṇa* texts.—As a matter of fact, however, the 'marriage' here stands for such rites as the pouring of libations into fire and the like, other than those in which those *mantras* are used which pertain to the maiden.—(*Vivādaratnākara*, p. 567.)

'*Seventh*'—according to the order in which he has named the sons.—(*Vīramitrodaya*, p. 612.)

149. याज्ञवल्क्य 2. 131.] गर्भे विन्नः सहोढजः ।

The son obtained in the womb is the '*Sahoḍha*.'—(*Yājñavalkya*, 2. 131.) [Quoted in *Madanapārijāta*, p. 650; *Vīramitrodaya*, p. 596.]

NOTES

When a girl is married while carrying a child in her womb, that child belongs to the man who has married the girl; his caste will be the same as his mother's.—(*Vishvarūpa.*)

When a child has been '*vinna*,' obtained, in the womb of a girl being given in marriage,—he is called the '*Sahoḍha*' Son.—(*Aparārka.*)

The '*Sahoḍha*' son is one who is in the womb of his mother when she is married, and who therefore is 'obtained' along with that girl; and he belongs to the man who has married the girl.—(*Mitākṣarā.*)

Being in the womb, the child becomes 'espoused' along with the 'espousal' of his mother; and when born, he becomes the '*Sahoḍha*' son of the man who has married his mother.—(*Vīramitrodaya-Ṭīkā* on Yajñavalkya.)

When a pregnant girl is married, the son born becomes the '*Sahoḍha*' son of the man who has married the girl, provided that he had been begotten by a man belonging to the same caste as the girl's husband.—(*Madanapārijāta*, p. 653.)

If before her marriage the girl has conceived, as a result of her connection with a lover of the same caste,—the child, that lies in her womb when she is married, becomes '*acquired*' ['*vinna*' being the past-participle form of the root '*vid*' to obtain] '*in the womb*,' and is called '*Sahoḍha*,'; he is the son of the man who has married the girl.—(*Vīramitrodaya*, p. 612.)

150. मनु 9. 173] या गर्भिणी संस्क्रियते ज्ञाताऽज्ञातापि वा सती ।
वोढुः स गर्भो भवति सहोढ इति चोच्यते ॥

If one marries, knowingly or unknowingly, a pregnant girl, the child in her womb belongs to him who marries her and is called "obtained with the wife."—(*Manu*, 9. 173.) [Quoted in *Aparārka*, p. 738; *Vivādaratnākara*, p. 567; *Vīramitrodaya*, p. 612.]

NOTES

'*Jñātā*,'—the girl being known to be pregnant. (*Sarvajñanārāyaṇa.*)

When a pregnant girl—known to be pregnant or not known to be pregnant,—is married, the child born of her becomes the son of the man who has married her; and he is called '*Sahoḍha*,' 'obtained with the wife.'—(*Kullūka.*)

Known or not known to be pregnant,—if the girl is married with the marriage-mantras;—the son is called '*Sahoḍha*,' *i.e.*, 'obtained along with the married wife.'—(*Rāghavānanda.*)

'*Saṃskriyate*,'—is married.—(*Nandana.*)

When a pregnant girl is '*married*'—all the marriage-rites are performed,—she being known or not known to be in a state of pregnancy,—the child born of that girl belongs to the man who has married her and is called '*Sahoḍha*.'—(*Rāmachandra.*)

(12) '*Apaviddha*'—CAST-OFF

151. वसिष्ठ] अपविद्धः पञ्चमः—यं मातापितृभ्यां त्यक्तं गृह्णीयात् पुत्रत्वेन ।

The *Cast-off* is the fifth (kind of son); whom one receives as a son, when he has been abandoned by his parents.—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 572, *Vīramitrodaya*, p. 612.)

152. विष्णु] अपविद्धस्त्वेकादशः—स मात्रा पित्रा वा परित्यक्तो येन गृहीतः [तस्य पुत्रः] ।

The *Cast-off* is the eleventh (kind of son); on being abandoned by his mother, or by his father, if he is taken up by another man, he belongs to this man.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 571; *Vīramitrodaya*, p. 612.]

NOTES

The words '*tasya putraḥ*' have to be supplied.—[*Vivādaratnākara*, p. 571.]

153. याज्ञवल्क्य 2. 132.] उत्सृष्टो गृह्यते यस्तु सोऽपविद्धो भवेत् सुतः ।

If on being abandoned, one is taken up, he becomes his *Cast-off* son.—(*Yājñavalkya*, 2. 132.) [Quoted in *Madanapārijāta*, p. 650 ; *Vīramitrodaya*, 596.]

NOTES

Apavidda, '– i. e., *Apaviddha*' by name.—(*Vishvarūpa.*)

When, without any such cause as his being an outcast or the like, a boy is abandoned by his parents,—and another man takes him up, he becomes the 'cast-off son' of that man.—(*Aparārka.*)

When on being abandoned by his parents, a boy is taken up by another man, he becomes the 'cast off' son of the man who has taken him up.—[In all these cases, from the 'Appointed Son' onwards—says the *Bālambhaṭṭī* the 'son' must be of the same caste as the person who has received him].—(*Mitākṣarā.*)

When the parents of a boy, finding themselves unable to support him, abandon him,—and he is taken up by another man as his son,—he becomes that man's son, named 'Cast-off.'—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

Cast-off by his parents, if a boy is taken up by a man he becomes his 'cast-off' son, provided he belongs to the same caste.—(*Madanapārijāta*, p. 653 ; *Vīramitrodaya*, p. 612.)

154. मनु 9. 171.] मातापितृभ्यामुत्सृष्टं तयोरेकतरेण वा ।
यं पुत्रं परिगृह्णीयात् अपविद्धः स उच्यते ॥

If a man takes up a son deserted by his parents, or by either of them, he is called the "*Cast-off Son.*"—(*Manu*, 9. 171.) [Quoted in *Aparārka*, p. 739; *Vivādaratnākara*, p. 571.]

NOTES

A child may be deserted by the parents, either because they have many children whom they are unable to support by reason of poverty,—or because the particular child has some such defect as disaffection towards his parents and the like.—But the child should not have been deserted openly ; as in that case, it would not be entitled to being received as a son.—This desertion may be by either one of the parents.—'*Takes up*,'—with a view to making him his son, and not only to supporting him.—(*Medhātithi.*)

'*Deserted*'—Without waiting to give the child away to some other person, if the parents cast off the child in a hurry;—and if some one, thinking that if the child were not taken up immediately, it would be impossible to protect him, takes him up.—This child must be of the same caste as the person taking him up.—(*Sarvajñanārāyaṇa*).

When a son has been abandoned by his parents,—or by either of them, or by reason of the death of either one of them,—and another man receives him as his own, he is the 'cast-off' son of the latter.—(*Kullūka*.)

He is called the 'cast-off' son, because he has been *cast-off* by the parents.—(*Rāghavānanda*.)

'*Anyatarṇa*,'—by either one of the parents,—being '*deserted*,'—if he is taken up by another man, he is called the 'cast-off son.'—(*Rāmachandra*.)

'*Utsṛṣṭam*,' abandoned; the abandoning may be due either to their being too poor to maintain him, or to the presence of some defect in the boy.—The '*taking up*' by the other man also should be for the purpose of making him a 'son,' and not only for supporting him—(*Vivādaratnākara*, pp. 571-572.)

(13) '*Pārashava*'—'The Living Corpse,' Shūdra-born

155. वसिष्ठ] शूद्रापुत्र एव षष्ठो भवतीत्याहुः ।

They say the *Shūdra-born* son is the sixth.—(*Vasiṣṭha*.) [Quoted in *Vivādaratnākara*, p. 574.]

Notes

'*Sixth*'—among the second set of six; among the whole lot of twelve, he is the *twelfth*.—'*They say*'—this shows that there is a difference of opinion; this difference is in regard to this son's rights to inheritance: Manu has declared tbe 'Shudra-born' son to be not entitled to inheritance. There should be an option in this matter,—one or the other option being adopted according to the qualifications of the son.—(*Vivādaratnākara*, p. 574.)

156. विष्णु] यत्र क्वचनोत्पादितो द्वादशः ।

The stray-born is the twelfth (kind of son).—(*Viṣṇu*.) [Quoted in *Vivādaratnākara*, p. 573.]

Notes

'*Yatra kvachana*,' 'stray-born,' *i.e.*, born, of a married or unmarried *Shūdra* woman.—(*Vivādaratnākara*, p. 573.)

157. बौधायन] द्विजातिप्रवरात् शूद्रायां जातः कामात् पारशवः ॥

Pārashava is the son born, through lust, to a Brāhmaṇa from a Shūdra woman.—(*Baudhāyana.*) [Quoted in the *Vivādaratnākara*, p. 574.]

158. मनु 9. 178.] यं ब्राह्मणस्तु शूद्रायां कामादुत्पादयेत् सुतम् ।
स पारयन्नेव शवः तेन पारशवः स्मृतः ॥

If a Brāhmaṇa, through lust, begets a son on a Shūdra woman, that son is as a corpse, even though living, and hence called the "Living Corpse."—(*Manu*, 9. 178.) [Quoted in *Vivādaratnākara*, p. 574; *Vīramitrodaya*, p. 613; *Dāyabhāga*, p. 143; *Dāyanirṇaya*, 3. 2—9.]

NOTES

'*Kāmāt,*'—Intercourse with a Shūdra woman is possible only '*through lust.*'—'*Brāhmaṇaḥ*'—This stands for the Kṣattriya also; as regards the *Vaishya*, a son born to him of a Shūdra wife is of the same caste as himself,—just like the son born to the Brāhmaṇa from a *Kṣattriya* wife.—'*Pārayan eva,*' while quite capable of functioning;—'*Shavaḥ*' having no right; this indicates that even when there are no other *Jñātis*, the Shūdra-born son would not be entitled to inherit the father's property.—(*Sarvajñanārāyaṇa.*)

If a Brāhmaṇa, through lust, begets a son on a married *Shūdra* wife, that son, though living, is as good as a corpse; that is to say, even though he does benefit the father by the offering of *Shrāddha*, yet he is called a 'corpse,' in view of the fact that he is unable to confer on the father the full benefit of a 'son.'—(*Kullūka.*)

This text defines the *Shaudra* (Shūdra-born) son.—'*On a Shūdra woman*'—duly married to him.—Though living, he is as good as a corpse.—'*Kāmāt*'—This indicates the deprecated character of this son;—or it may be due to the fact that this son does not confer on the father the full benefits of a son.—(*Rāghavānanda.*)

'*Pārayan,*'—living;—'*Shavaḥ,*' as good as a corpse;—hence he is called '*Pārashava.*' This only explains the etymological meaning of the name. The meaning is that though the 'seed' is superior, yet the 'soil' being inferior, the product is as good as dead; because such a son is not entitled to the performance of religious rites.—(*Nandana.*)

That son whom the Brāhmaṇa begets, through lust, on a *Shūdra* woman,—such a son, '*though living,*'—*i.e.*, capable of functioning,—is as good as a 'corpse'; that is why he has been called '*Pārashava.*'—(*Rāmachandra.*)

'*Pārayan,*' though capable of conferring some benefit upon the man whom he regards as his father;—'*Shavaḥ,*' because the benefit conferred by him is very small.—(*Vivādaratnākara*, p. 574.)

If a son is begotten by one on his own *Shūdra* wife, he is, in reality, not a 'substitute of a son,' but a 'body-born' or 'legitimate,' son.—Yet Manu has mentioned him among the 'substitutes'; and the meaning of this is that the difference between the sons born of wives of lower castes and that born of the Shūdra wife is that though both are equally 'legitimate,' yet, if one of the former group is there, the father shall not have recourse to any 'substitute,' but he may have another substitute, even though the son born of his *Shūdra* wife be there.—(*Aparārka*, pp. 739-740.)

This refers to the son of a Shūdra woman not married to the man; as for the Shūdra woman married to the man (of a higher caste), it has been permitted that he may have recourse to her once in her 'period,' when alone she might conceive.—(*Dāyabhāga*, p. 142.)

This son is called a 'corpse,' because, not being entitled to offer *Shrāddha* to his father, he is of very little use to him.—(*Dāyanirṇaya*, 4. 1. 1.)

General Rules about Sons

159. बृहस्पति] पुत्रास्त्रयोदश प्रोक्ता मनुना येऽनुपूर्वशः ।
सन्तानकारणं तेषामौरसः पुत्रिका तथा ॥
आज्यं विना यथा तैलं सद्भिः प्रतिनिधीकृतम् ।
तथैकादश पुत्रास्तु पुत्रिकौरसयोर्विना ॥

The thirteen sons who have been described, in due order, by Manu,—of all these, the *Legitimate Son* and the *Appointed Daughter* are the means of race-perpetuation.—Just as in the absence of clarified butter, oil has been regarded by cultured people as its substitute, in the same manner the eleven sons are substitutes, in the absence of the *Appointed Daughter* and the *Legitimate Son*.—(*Bṛhaspati*.) [Quoted in *Aparārka*, p. 735; *Vivādaratnākara*, p. 575; *Vīramitrodaya*, p. 613; *Dāyanirṇaya*, 4. 1-2]

Notes

The term '*Appointed Daughter*' here includes also the 'son of the Appointed Daughter.'—(*Aparārka*, p. 735.)

What is meant is that the other sons are to be made 'substitutes' for the son.—(*Vīramitrodaya*, p. 613.)

This declares the superiority of the *Aurasa* and the *Putrikāputra*; if these two sons have died, then their son and grandson are entitled to the property.—If there are no sons, grandsons or great-grandsons of the said two kinds of sons, then alone do the *Kṣetraja* and the rest come in.—(*Dāyanirṇaya*, 4. 1—4.)

160. मनु 9. 182-183.] (A) भ्रातॄणामेकजातानामेकश्चेत् पुत्रवान् भवेत्।
सर्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीत्॥
(B) सर्वासामेकपत्नीनामेका चेत् पुत्रिणी भवेत्।
सर्वास्तास्तेन पुत्रेण प्राह पुत्रवतीर्मनुः॥

(A) Among brothers born of the same father, if one has a son, Manu has declared all of them to be "with son," through that son.—(B) Among all the wives of one man, if one has a son, Manu has declared all of them to be "with son," through that son.—(*Manu*, 9. 182-183.) [Quoted in *Vivādaratnākara*, p. 582; *Vīramitrodaya*, p. 609; *Smṛtichandrikā*, p. 670; *Mitākṣarā*, p 712; *Dāyabhāga*, p. 96; *Smṛtitattva* II, p. 187; *Dāyanirṇaya*, 10. 1—8.

NOTES

[See IV, 59.]

(A) '*Ekajātānām*,' begotten by one man; hence step-brothers are also included. The implication of this is that so long as any brother is capable of begetting children, it would be wrong to try and secure a *Kṣetraja* son for any one among them.—(B) Similarly, if any one of the co-wives has a son, no son shall be begotten by '*Niyoga*' on any others—(*Sarvajñanārāyaṇa.*)

(A) Among brothers having the same father and mother, if one has a son and the others are sonless, then, through that son, all the brothers are regarded to be 'with son.' Hence while such a son is there, recourse should not be had to set up the 'substitutes' of a son. This also means that that one son would offer the *Shrāddha* to, and inherit the property of, all the brothers. What is said here regarding the brother's son being a 'son' must be taken to be meant for cases where the other 'heirs' mentioned by Yājñavalkya—'wife, daughters, parents and brothers'—are not there.—(B) The meaning is that so long as woman's step-son is there, she shall not have an 'adopted' or any other kind of son.—(*Kullūka.*)

(A) So long as a man's nephew is there, he shall not appoint any 'substitutes' of a son.—'*Ekajātānām*,' born of the same father. A 'substitute' can be appointed only when none of the 'heirs' mentioned by Yājñavalkya—wife, daughters, parents, brothers and their sons,—is there.—(B) Similarly, among a number of co-wives, if any one has a son, the others shall not have any 'adopted' or other kinds of son.—(*Rāghavānanda.*)

(A) '*Ekajātānām*'—those born of the same father and mother.—'*Putravān*,' has a legitimate son.—(B) '*Putriṇī*'—having a legitimate son.—(*Nandana.*)

Asahāya has explained the sense of a similar text to mean that for men, so long as the brother's son is there,—and for women, so long as the step-son is there,—it will not be right to have recourse to the '*Kṣetraja*' or other 'substitutes' of a son. The same has also been said by *Udayakara* in his commentary on Manu.—(*Vivādaratnākara*, p. 583.)

Since the offering of the *Shrāddha* and other functions of the 'son' can be fulfilled by the step-son, a woman shall not take steps to have any other kind of son, without the permission of her husband ; as all the purposes of the woman and her husband shall be accomplished through that same son ; for the husband, of course, the son will be the 'legitimate' one ; for the woman also he would be a 'secondary' son, just like the 'adopted' son ; hence such a woman should not have any other kind of son except with the permission of her husband.— In fact, both these verses have been explained by the *Mitākṣarā* and other works to mean that so long as there is a possibility of a man having a brother's son, he shall not take steps to have any other 'substitute' of a son.— (*Vīramitrodaya*, pp. 609-610.)

This does not mean that one brother's son is actually a son to the other brother ; because even in the presence of one's nephew, one is regarded as 'sonless.' The present text is meant only to eulogise the 'legitimate' son.— If the nephew were regarded to be as good as the *son*, then this would militate against all that Yājñavalkya has said in the text—(*a*) '*Patnīduhitaraḥ, etc.*,' and (*b*) '*Svaryātasya hyaputrasya, etc.*'—(*Smṛtichandrikā*, p. 670.)

All that is meant is that so long as it is possible to adopt a nephew as 'son,' no one else shall be adopted ; it does not mean that the nephew is actually the son ; as this would go against the text '*Tatsutā gotrajā bandhuḥ, etc.* (*Yājñavalkya* 2. 135) [wherein the scale of 'heirs,' the brother's sons come after 'the wife, daughters, parents and brothers,' which would not be right if they were as good as 'sons.']—(*Mitākṣarā*, p. 712.)

161. बृहस्पति] यद्येकजाता बहवो भ्रातरस्तु सहोदराः ।
एकस्यापि सुते जाते सर्वे ते पुत्रिणः स्मृताः ॥
बह्वीनामेकपत्नीनामेष एव विधिः स्मृतः ।
एका चेत् पुत्रिणी तासां सर्वासां पिण्डदस्तु सः ॥

If there are many uterine brothers born of the same father, when a son is born to any one of them, all are declared to be "with son."—The same rule holds good regarding the several wives of one man ; if any one of them has a son, he offers the cake to all of them.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 583 ; *Smṛtichandrikā*, p. 670.]

NOTES

See notes on the preceding text of Manu, 9,182—180.

The sense of these texts as explained by Devasvāmin is that if a sonless person has got to take a substitute for a son, he or she shall not take others, so long as the brother's son or the step-son is available.—(*Smṛtichandrikā*, pp. 670-671.)

162. वसिष्ठ] पौत्रोऽथ पुत्रिकापुत्रः श्रेयःप्राप्तिकरावुभौ ।
रिक्थपिण्डाम्बुदाने च समौ सम्परिकल्पितौ ॥
अपुत्रेण सुतः कार्यो यादृक् तादृक् प्रयत्नतः ।
पिण्डोदकक्रियाहेतोर्नामसङ्कीर्तनाय च ॥

The son's son and the son of the Appointed Daughter are both conducive to welfare; in the matter of inheritance and the offering of cakes and water, both have been declared to be equal. A man having no son should try his best to secure any sort of a son, for the purpose of the offering of cakes and water and for the perpetuation of his name.— (*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 583.]

163. ब्रह्मपुराण](A) दत्तकश्च स्वयन्दत्तः कृत्रिमः क्रीत एव च ।
अपविद्धश्च ये पुत्रा भरणीयाः सदैव हि ॥
भिन्नगोत्राः पृथक्पिण्डाः पृथग्वंशकराः स्मृताः ।
सूतके मृतके चापि त्र्यहाशौचस्य भागिनः ॥
अथ दत्तान्नदातॄणां बीजक्षेत्रवतां तथा ।
शूद्रो दासः पारशवो विप्राणां विद्यते क्वचित् ॥
(B) राज्ञां तु शापदग्धानां नित्यं जयवतां तथा ।
अथ सङ्ग्रामशीलानां कदाचिद् वा भवन्ति ते ॥
[*v.l.*, न कदाचिद् भवन्ति ते] ।
औरसो यदि वा पुत्रस्त्वथवा पुत्रिकासुतः ।
विद्यते नहि तेषां तु विज्ञेयाः क्षेत्रजादयः ॥
एकादश पृथग्गोत्रा वंशमात्रकरास्तु ते ।
श्राद्धादि दासवत् सर्वे तेषां कुर्वन्ति नित्यशः ॥
(C) गूढोत्पन्नश्च कानीनः सहोढः क्षेत्रजस्तथा ।
पौनर्भवश्च वैश्यानां राजदण्डभयादपि ॥
वर्जिताःपञ्चधनिनां [*v.l.*, बलिनः] शेषाः सर्वे भवन्ति हि ।
(D) शूद्राणां दासवृत्तीनां परपिण्डोपजीविनाम् ॥
परायत्तशरीराणां न क्वचित् पुत्र इष्यते ।
तस्माद् दासस्य दास्याश्च जायते दास एव हि ॥

(A) The adopted, the self-offered, the appointed, the purchased and the cast-off,—all these sons should be always supported; these have been declared to belong to a different *Gotra*, to a different *Piṇḍa*, and to be perpetuators of a different line and partakers of only three days' *Impurity* on births

and deaths.—For such *Brāhmaṇas* as supply food and clothing, and are the owners of the *seed* as well as the *soil*, the Shūdra-slave also is, in some cases, the *Pārashava* son.

(B) For such *Kṣattriyas* as are groaning under a curse, and are constantly perishing and are addicted to fighting,—these sons are possible (*v.l.*, not possible) in some cases. For them such sons are possible as the *Legitimate son* or *the son of the Appointed Daughter;* and the other eleven kinds of sons as the *Soil-born* and the rest should be regarded as belonging to different *gotras* and being mere perpetuators of the line ; and they perform the *Shrāddha* and other rites for them, in the manner of slaves.

(C) For *Vaishyas*, such sons as the *secretly born*, the *maiden-born*, the *obtained with the wife*, the *soil-born* and *the born of the remarried woman* are not possible, for fear of punishment from the king ; the other sons are possible for them.

(D) For Shūdras, who are living like slaves, are depending upon food given by others and have their body under the control of others,—there can be no son ; hence for the slave and the slave-girl only a slave can be born.—(*Brahmapurāṇa.*) [Quoted, in *Aparārka*, p. 787 ; *Vivādaratnākara*, pp. 575, 577; *Vīramitrodaya*, pp. 613-614.]

NOTES

In these lines the *Brahmapurāṇa* has declared what kinds of sons are permissible for what castes. (*Aparārka*, p. 737.)

(A) It is only by the way that the three days' duration for Impurity has been mentioned here.

(B) '*Kadāchit*.'—This sets aside the notion that such men may have no such sons at all.—'*Putrikāsuta*' means here the 'son in the shape of the Appointed Daughter.'—'*Soil-born and the rest*.'—This includes all kinds of sons except the Legitimate and the *Putrikā-suta*.—The meaning is that if there is a Legitimate son or an Appointed Daughter, then the Soil-born and other sons are mere 'perpetuators of the line.'—'*Dāsavat*,' in the manner of slaves.

(C) This text declares the possibility of 'secondary' sons for *Vaishyas*.—Thus it has been shown that 'secondary' sons are possible for Brāhmaṇas, Kṣattriyas and Vaishyas.

(D) It is shown here that for *Shūdras*, who are completely under their masters, it is impossible to beget their own sons ; but the last line points out that it is not meant that *Shūdras* can have no sons at all ; they can have sons,

but the son also will be one who is under the sway of the Master, and as such not entirely free to perform the functions of a son (to the progenitor).—(*Vivādaratnākara*, pp. 575—577.)

164. मनु 9. 141-142.] (A) उपपन्नो गुणैः सर्वैः पुत्रो यस्य तु दत्रिमः ।
स हरेतैव तद् रिक्थं सम्प्राप्तोऽप्यन्यगोत्रतः ॥
(B) गोत्ररिक्थे जनयितुर्न हरेत् दत्रिमः सुतः ।
गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा ॥

(A) If one has an Adopted son endowed with all good qualities, he shall inherit his property, even though he may have come from another *gotra*.

(B) The Adopted son shall not take the *gotra* or the property of his progenitor; the cake follows the *gotra* and the property; for him, therefore, who has given away his son, the offerings cease. – (*Manu*, 9. 141-142.) [Quoted in *Aparārka*, p. 737; *Vivādaratnākara*, pp. 567-568; *Vyavahāramayūkha*, p. 115.]

NOTES

Under Manu (9. 185), it has been said that 'sons are the inheritors of the father's property,' where all kinds of sons appear to be declared as entitled to inheritance; only so long as the Legitimate son is there, the 'soil-born' and other sons are entitled to bare maintenance (*Manu*, 9. 163.)—Thus then the title of the Adopted son to inherit (in the absence of the Legitimate son) having been already declared in those texts, what the present text does is to indicate that the Adopted son is entitled to inherit, even when the Legitimate son is there.—What remains doubtful is what his exact share shall be. —On this point some people hold that since nothing is specifically mentioned, the share must be equal to that of the Legitimate son.—This, however, is not right. If shares had been meant to be equal, it would have been clearly stated; as it has been done in the case of the 'Appointed Daughter' (9. 134). Hence it follows that, as in the case of the 'soil-born' son, so in that of the 'Adopted' son also, the share shall be the *sixth* or *eighth* part (of that of the 'Legitimate' son).—The real purport, however, of the present text—according to our teacher—is that the share of the 'Adopted' son should be less than that of the 'soil-born' son. . . . It is only right that the 'Adopted' son should have a share in his adoptive father's property; since he does not inherit either the *gotra* or the property of his progenitor, and this for the simple reason that he has gone out of the family;—for this same reason he does not offer cakes to his progenitor: for one offers the cakes to the person whose *gotra* and property he inherits.—'*Svadhā*' stands for the *Shrāddha*.—This same rule applies to the 'Appointed son,' 'the one obtained along with the wife,' the 'cast-off son' and the '*Dvyāmuṣyāyaṇa*' son.—Some people construe '*harēt*' in the causal sense, taking

the text to mean that the Adopted son *shall not deprive* the progenitor of the benefits of a son.—But there is no authority for this.—(*Medhātithi.*)

'*Datrimaḥ*,'—one who has been given away by his father and mother ;—if he has all the good qualities that a son should have, he shall be entitled to the same share in the property as the primary, *i.e.*, Legitimate, son.—The meaning is that the Adopted son has nothing to do with the property of his progenitor.—For the same reasons, *i.e.*, as he belongs to the *gotra* of the adoptive father, he is not a '*Dvyāmuṣyāyaṇa*,' which name applies only to the *Kṣetraja* and the *Putrikāputra*.—'*Gotrarikthānugaḥ, etc.*'—This means that it is only when one belongs to the same *gotra* as another person and inherits his property that he offers him the cakes. When a man gives away a son, the '*svadhā*,' *i.e.*, all that the son was expected to do for him, *i.e.*, the *Shrāddha*, ceases for him.—(*Sarvajñanārāyaṇa.*)

Later on Manu (in 9. 185) is going to declare that 'sons are to inherit the property of the father,' where all the twelve kinds of sons are spoken of as 'inheritors of the father's property'; further, in accordance with the rules already laid down, the fact that the Adopted son shall inherit the property in the absence of the 'Legitimate' and the 'Soil-born' son is also well-established. The purpose of the present text therefore is to lay down that in the event of the Adopted son being endowed with all good qualities, he is to have a share in the father's property even when the 'Legitimate' son is there. The meaning is that, if the Adopted son of a man is endowed with all good qualities such as learning and the like,—even though he may have come from another *gotra*,—he shall receive a share in the father's property. In view of the rule that 'the Legitimate son alone is the sole master of the father's property,'—which asserts the superiority of the Legitimate son to all other sons,—the share of the 'Adopted' son cannot be equal to that of the 'Legitimate' son ; his share shall be the 'sixth part'; the same that has been assigned to the 'Soil-born' son.—Govindarāja has declared the meaning to be that '*in the absence of the Legitimate and the soil-born son*, the *adopted* son possessed of all good qualities is to inherit the father's property.'—But this is not right ; because in that case it would come to this that while the 'Appointed' and other sons would be entitled to inherit the property even when devoid of all good qualities, the 'Adopted' son would be so only when possessed of all good qualities ;—and this would be most iniquitous.—'The *gotra* and the *property* of the progenitor,—the Adopted son shall never take' ;—the cake-offering follows the *gotra* and the property ;—*i.e.*, one offers the cake only to a person whose *gotra* and property he inherits ;—hence when the progenitor has given away the son, all the *shrāddha* and other offerings made by that son cease for him.—(*Kullūka.*)

While reiterating the fact of the twelve kinds of sons being entitled to inherit the father's property, the texts assert the same with regard to the 'Adopted' son.—'*Apyanyagotrataḥ*'—This includes also the *Sagotra* (the adopted son of the same *gotra* as the adoptive father). '*Guṇaih*,'—such as learning, humility, devotion to the father and so forth.—The 'Adopted' son is to inherit the property only in the absence of the 'Legitimate' and the 'Soil-born' sons.—The second verse supplies the answer to the question as to whether or not the 'Adopted' son has any connection with the *gotra* and the

property of his progenitor.—The Adopted son does not acquire the *gotra* and the property of the progenitor, who, on that account, does not receive the cake offered by that son ;—the reason for this is that the cake-offering is due to the *gotra* and the property.—'*Dadataḥ*,'—for him who has given away the son, —*i.e.*, for the progenitor—the '*Svadhā*' ceases.—In the absence of the Legitimate and Soil-born sons, the other ten sons inherit the property,—such is the meaning according to Govindarāja. But the real meaning is that the Adopted son has a share in the property also when the Legitimate and Soil-born sons are there. If such were not the meaning, then there would be no point in the qualifying phrase '*endowed with all good qualities*.' This is the reason why Medhātithi has declared that 'what the present text does is to indicate that the Adopted son is entitled to inherit even when the Legitimate son is there.'—(*Rāghavānanda.*)

The first verse prescribes the inheritance of the Adopted son.—The Adopted son shall not adopt the *gotra* or receive the property of his progenitor ; he shall receive the *gotra* and the property of the person to whom he has been given away. The reason for this is stated in the second half of the verse. The person who receives the *gotra* and the property is to offer the cake ; none other is to do it ; consequently for the man who has given away his son the '*Svadhā*,' *i.e.*, the offering of cake, etc., ceases.—(*Nandana.*)

The sense of the two verses is as follows : The Adopted son shall take the *gotra* and the property of the person who has given him away as also of the person to whom he has been given away. If he did not take the *gotra* and the property of both, then the cake, which follows the *gotra* and property of another "ceases, etc.," *i.e.*, precludes the *Shrāddha* for both the fathers. Inasmuch as Shāṅkhāyana has prescribed the offering of cakes to the adoptive as well as the natural father, the Adopted son shall offer the cake to both, after having taken the *gotra* and property of both.—(*Rāmachandra.*)

(B) The 'Adopted' son shall not take the *gotra* or the property of his previous (natural) father, nor shall he offer the cake to him ; he shall take the *gotra* and property of, and offer the cake to, his second (adoptive) father.—The term 'cake' here stands for the whole body of the after-death rites.—(*Aparārka*, p. 737.)

(A) '*Guṇaiḥ*'—such as caste, learning, conduct.—The title to inheritance being already implied by the fact of his being a 'son,' what the words '*Upapanno, etc.*,' are meant to indicate is that if a Legitimate son be born after the adoption, the adopted son is to have a share in the property, if he is possessed of good qualities,—but only maintenance if he is devoid of good qualities.

(B) '*Gotra*,' such as '*Kāshyapa*' and the rest which are well known. Since as a general rule, the offering of the cake follows the taking of *gotra* and taking the property,—the offering of the cake becomes precluded (if the *gotra* and the property are not taken).—The term '*Svadhā*' stands for the *Shrāddha* and other offerings.—(*Vivādaratnākara*, p 568.)

(B) '*Gotrarikthānugaḥ*,'—*i.e.*, determined by the taking of the *gotra* and the property.—The 'adopted' son meant here is the 'pure' one, not the '*Dvyāmuṣyāyaṇa*,' who takes the *gotra*, etc., of the progenitor also.—The term '*Piṇḍa*' has been explained as 'the *Shrāddha* and other offerings,'

by Medhātithi, Kullūka, Bhaṭṭa and others. According to others '*Piṇḍa*' stands for the '*Sapiṇḍa-relationship*' and '*Svadhā*' for the *Shrāddha* and other offerings. In reality, the terms '*gotra*,' '*riktha*,' '*piṇḍa*' and '*svadhā*' are meant to indicate all the functions connected with the *Piṇḍa* (Body), and all these are precluded from the Adopted son. Thus it is that his relationship to his uterine brothers, uncles and other paternal relations also becomes excluded. It is for this reason that when the son of the Adopted son performs the *Sapiṇḍīkaraṇa* for his father, he should do it with the adoptive father.—(*Vyavahāramayūkha*, p. 115.)

165. मनु 9. 180-181.] (A) क्षेत्रजादीन् सुतानेतानेकादश यथोदितान् ।
पुत्रप्रतिनिधीनाहुः क्रियालोपान् मनीषिणः ॥
(B) य एतेऽभिहिताः पुत्राः प्रसङ्गादन्यबीजजाः ।
यस्यैते बीजतो जातास्तस्य ते नेतरस्य तु ॥

(A) These eleven sons, the *soil-born* and the rest, as here described, the wise ones call "substitutes of a son,"—taken with a view to the failure of a religious duty.

(B) Those sons born of strangers that have been described here by the way, belong to him from whose seed they are born, and not to any other person.—(*Manu*, 9. 180-181.) [Quoted in *Vivādaratnākara*, p. 574 ; *Vīramitrodaya*, p. 613.]

NOTES

'*Substitute*,'—when the principal is not there, which means that these other sons are to be taken only in the absence of the 'legitimate' son.—In other Smṛtis these sons have been named in a different order from the one found in Manu [where the order is—(1) Legitimate, (2) Soil-born, (3) Adopted, (4) Appointed, (5) Secretly-born, (6) Cast-off, (7) Maiden-born, (8) Obtained with the wife, (9) Purchased, (10) Born of a Remarried woman, (11) Self-offered, (12) Shūdra-born] ; though no special significance attaches to the order in which these are named, yet a distinctly useful purpose is served by it.—These sons are taken '*with a view to*'—on account of—'*the failure of a religious duty*' ; *i.e.*, with a view to prevent the transgression of the injunction that 'one shall beget a child.' This injunction is an obligatory one, and as such must be acted up to by the Householder. The principal method of doing this consists in begetting a 'Legitimate son,' but failing that, one may have recourse to the others.

(B) Some people have taken this second verse to mean the denial of the injunction regarding the other sons, even in the absence of the 'Legitimate' son ; the sense being that—'those that have been described as *substitutes*, to be appointed in the absence of the Legitimate son, should *not* be appointed, because, being born of the seed of another man, they are the sons of that man, and of none other, *i.e.*, they cannot be the sons of the man that appoints

them. '—Thus then, the previous texts having sanctioned the appointment of such sons and the present text having forbidden it, it must be regarded as a case of *option*; and this option shall apply to the *inheritance of property*; so that the 'maiden-born,' the 'one obtained with the wife,' 'one born of the remarried woman,' and the 'secretly-born' are not entitled to property; the 'adopted and the rest are entitled to inherit,'—but only in the absence of the 'Legitimate' son; the former ones are entitled to food and clothing only.—(*Medhātithi.*)

(A) '*Kṣetrajādīn*,'—*i.e.*, not the '*Putrikāputra.*—'*Kriyālopāt*,'—*i.e.*, with a view to avoid the contingency of no after-death rites being performed.—

(B) The 'soil-born' and other sons that have been named in connection with the 'Legitimate' son, *do not* belong to the person from whose seed they have been begotten; they belong to the '*other person*,'— *i.e.*, the person to whom the soil belongs, or he who has done the 'purchasing,' etc.—Some people have explained this verse to mean that—' If the *adopted* and other sons spoken of here are such as are begotten on the wife of the person who has given away the son by another person, then these cannot be the sons of the man who has adopted or received them,—even though they have been given away by their supposed father; in fact, they belong to the man from whose seed they have been begotten.'—(*Sarvajñanārāyaṇa.*)

(A) These eleven sons the sages have declared to be 'substitutes' of the son, who are taken up with a view to avoiding the contingency of transgressing the injunction of begetting children and also that of no after-death rites being performed for one.

(B) The 'soil-born' and the other sons that have been mentioned in course of our treatment of the 'Legitimate' son belong to the person from whose seed they have been begotten, and not to the 'owner of the soil' or others; consequently they should not be taken up so long as one has a 'Legitimate' son, or an 'Appointed daughter;'—it is this fact that is meant to be emphasised by the present text.—'*Anyabījajāḥ*,' this indicates the eleven kinds of sons (and should not be taken literally); because the 'son born of the remarried woman' and the 'Shūdra-born' son should be avoided in the same manner as the others,—even though these two are born of the seed of the man to whom they belong. This is why Vṛddha-Bṛhaspati has declared—'*Ājyam vinā, etc.*'—(*Kullūka.*)

(A) The '*Pārashava*' (Shūdra-born) and other sons may perform the functions of the 'son'; but they are not to have their *Upanayana* and other Brahmanical rites performed.

(B) These have been declared to be 'sons,' because, in the absence of such a scriptural declaration, they could not be accepted as 'substitutes'; in reality they are not 'sons' at all. What is meant by the words of the text is that, if the progenitors of these 'sons' have no other sons, these (though given away) shall perform their *Shrāddha* and other rites. As regards the 'one born of a remarried woman' and the 'Shūdra-born,' even though these are begotten by the man himself, yet they are not 'primary' sons; as says Bṛhaspati.—'*Ājyam vinā, etc.*'—According to Yājñavalkya (2. 133)—'Among all the twelve sons the one that follows in the list offers the cake and inherits the property only in the absence of the one that precedes'; and then he goes on to assert the title to inheritance of the 'wife, daughters' and the rest; so that these latter

are entitled to inherit only where no son—either primary or secondary—is there.—(*Rāghavānanda.*)

These two verses declare the superiority of the 'Legitimate' son.

(A) These are 'substitutes of son,' not sons in the primary sense.—'*Kṛiyālopāt*,'—by reason of the absence of the action of procreation.—The sense is that so long as the primary, 'Legitimate,' son is there, the functions of the 'son' should not be performed by the substitutes.

(B) What is meant by the second verse is that a son is 'primary' for his *progenitor* only.—(*Nandana.*)

(B) The sons that have been named in connection with the 'Legitimate' son, who are '*born of strangers*,' belong to the persons of whose seed they are born, not to anyone else.—(*Rāmachandra.*)

(A) '*Putrapratinidhīn*'—Substitutes of the 'Legitimate' son and the *Putrikāputra*; *i.e.*, in the absence of these two, they perform the functions of the 'son.' This is in accordance with the words of *Bṛhaspati*—'*Putrāstrayodasha proktāḥ, etc.*'—The reason for this is supplied by the word '*Kṛiyalopāt*,'—on account of the contingency of transgressing the injunction that 'children should be begotten'; this injunction is obligatory; and (in the absence of the primary sons) it is obeyed somehow (by the taking of a secondary son.)—(B) *Yasyaitē*—This denial of their 'primary character' serves the purposes of emphasising the 'secondary' character of those sons.—(*Vivādaratnākara*, pp. 574-575.)

'*Kriyālopāt*';—This is a reason for regarding the sons as 'substitutes.' But the *Smṛtichandrikā* has explained the meaning to be that 'The wise men have declared the eleven sons as *substitutes*, through the fear that, in the event of there being no Legitimate son, (if no such substitutes were appointed) there would be no performance of *Shrāddha* and other rites that are to be performed by a *son*.'—(*Vīramitrodaya*, p. 613.)

166. मनु 3. 42.] अनिन्दितैः स्त्रीविवाहैरनिन्द्या भवति प्रजा ।
निन्दितैर्निन्दिता नृणां तस्मान्निन्द्यान् विवर्जयेत् ॥

By uncensured marriages the progeny becomes uncensured; and censured by the censured; hence people should avoid the censured marriages.—(*Manu*, 3. 42.)

NOTES

Those marriages are called 'uncensured' which have been sanctioned by the scriptures; and the '*progeny*'—in the shape of the son, etc.—born from wives wedded by those forms of marriage is '*uncensured*,' *i.e.*, praiseworthy.—From the '*censured*'—prohibited—marriages is born the '*censured*,' defective, child.—Therefore with the view that such children may not be born as become a source of pain, people 'should avoid the censured marriages'.—(*Medhātithi.*)

167. मनु 9. 107.] यस्मिन्नृणं सन्नयति येन चानन्त्यमश्नुते ।
स एव धर्मजः पुत्रः कामजानितरान् विदुः ॥

That son alone is a man's "Duty-born" son to whom he transfers his debt and through whom he attains immortality; others are known as "lust-born."—(*Manu*, 9. 107.) [Quoted in *Vibhāgasāra*, 8. 2—7.]

NOTES

This is not to be taken literally. If this were literally true, then the younger sons would not be entitled to any property, and this would be contrary to Manu's own declarations under 9. 108.—(*Medhātithi.*)

'*Ānantyam*,'—immortality; a man becomes entitled to Liberation only after he has begotten a son.—'*Dharmajaḥ*,' begotten as a duty.—The others are '*lust-born*,' because the duty is accomplished through the first son.—(*Sarvajñanārāyaṇa.*)

The son on whose birth, the father becomes cleared of his debt, and by whose birth he attains immortality, . . . that son alone is one 'born' on account of 'Duty'; as that son alone confers such benefits as the clearance of debts and the like.—The others the sages regard as '*lust-born*.' It follows, therefore, that the eldest son should take the father's entire property (as declared by Manu under 9. 105—'*Jyeṣṭha eva tu gṛhṇīyāt, etc.*'—(*Kullūka.*)

That son to whom the father transfers his debt.—'*Dharmajaḥ*,' born in pursuance of duty. This is an *Arthavāda*—(*Rāghavānanda.*)

In certain families the eldest brother is found to be devoid of all good qualities, while the youngest is endowed with good qualities; what is to be done in such cases?—This text answers this question. That son alone is one 'born in pursuance of duty' on whom devolves the debt (responsibility) of offering the cake and other offerings due to the fathers,—and through whose good reputation, the father becomes immortal; and not necessarily the eldest born.—'*Others*,'—*i.e.*, those that are devoid of good qualities.—(*Nandana.*)

That son on whose birth the father puts an end to all his three kinds of debt due to gods, sages and ancestors.—'*Dharmajaḥ*,' born in pursuance of duty.—(*Rāmachandra.*)

This text supplies the answer to the question why there is preference accorded to the eldest son. The fact of his being born first and thereby relieving the father of his debts makes him alone the real son born of righteousness; all the purposes of a 'son' having been served by this one son, the others that follow are only the products of lust.—(*Vibhāgasāra*, 8. 2—7.)

DEPRECATED SONS

168. मनु 9. 143.] अनियुक्तासुतश्चैव पुत्रिण्याप्तश्च देवरात् ।
उभौ तौ नार्हतो भागं जारजातककामजौ ॥

The offspring of a woman not "authorised," and the offspring obtained from her brother-in-law by a woman who has already got a son,—both of these are undeserving of a

share,—one being born of an adulterer and the other being a product of lust.—(*Manu*, 9. 143.) [Quoted in *Vivādaratnākara*, p. 586.]

NOTES

It having been declared that if the husband dies without male issue, the wife should obtain the sanction of her elders for the begetting of a son, this same declaration is reiterated here.—If a woman has not been 'authorised' by her elders, and yet begets a son,—under the impression that she being her husband's 'soil,' the son born of her would be his 'soil-born son' and thus entitled to inherit his property,—a son born in this manner shall not inherit the property of the father; because a son is called 'soil-born' only when he is born in the manner expressly laid down in the scriptures, and it is only then that he inherits the property of the 'owner of the soil' (his dead father). It is for this reason that the present text denies the *inheriting capacity* of the son born of the woman not duly 'authorised'; but it does not forbid the offering of the funeral cake, even though the son is born of an 'outcast' woman.—Nārada has laid down a special rule—'*Jātā ye tvaniyuktāyām, etc.*'—The text uses the word '*suta*' (instead of '*putra*') because the child referred to is not born in accordance with the law relating to the 'adopted' and other sons. Among twice-born people, the issues of one's mere 'seed' (and not of lawful wedlock) are entitled to mere subsistence, and not to the inheritance of property. It is the duty of the 'Legitimate' son to provide for the maintenance of the unlawfully-begotten sons also; but these latter are not entitled to any inheritance in the property; in 9. 162 we read of only "two heirs." where only two sons are spoken of as 'heirs.'—From what is said here it follows that 'the issue of the unauthorised woman,' not entitled to the property of his mother's husband, does become a sharer in the property of the man from whose seed he has been born; and his share in this case would be just enough for his subsistence.—Similarly also, in the case of the woman who has already got a son, if the son is alive, and yet she obtains a son from her brother-in-law, even by 'authorisation.'—(*Medhātithi.*)

Even when there is no son, the woman should proceed to have a son only under 'authorisation' from her elders.—(*Sarvajñanārāyaṇa.*)

The son that has been born without the 'authorisation' of elders—or the son that is born, even under authorisation, to a woman who has already got a son begotten by her brother-in-law through lust,—both these are undeserving of a share in the property.—(*Kullūka.*)

'*Not authorised*,' even though without a son,—or 'authorised,' when with a son;—the first being born of an adulterer and the second being a product of lust, of the woman.—(*Rāghavānanda.*)

These texts declare that even some of the 'soil-born' and other sons are not entitled to inheritance. The first is the son born to an *unauthorised* woman, from her brother-in-law, and the second the son born from the brother-in-law to an *authorised* woman who has a son already,—both these are undeserving of share in the property.—(*Nandana.*)

'*Aniyuktāsutaḥ*'—is that son who, in the absence of the husband, is begotten on a woman who has not been 'authorised' by her elders.—'*Bhāgam*,'—share in the property of the 'owner of the soil' (the woman's husband). This includes the *offering of cakes* also (*i.e.*, such a son shall not be entitled to offer the funeral cakes).—This refers to cases where the 'soil' (the woman) has been won over by the payment of a fee, as is clear from the following text of Nārada.—(*Vivādaratnākara*, p. 587.)

169. नारद 13. 19-20.] जाता ये त्वनियुक्तायामेकेन बहुभिस्तथा ।
अरिक्थभाजस्ते सर्वे बीजिनामेव ते सुता: ॥
दद्युस्ते बीजिने पिण्डं माता चेच्छुल्कतो हृता ।
अशुल्कोपनतायां च पिण्डदा वोढुरेव ते ॥

Those that are born from an unauthorised woman, either by one or by several men, are not entitled to the property of their father; being, as they are, the sons of the persons from whose seed they have been born; they shall offer the cake also to the person from whose seed they are born, if the mother had been got over by the payment of a fee; if, however, the mother had *not* been got over by the payment of a fee, then they shall offer the cake to the person who had wedded the woman.—(*Nārada*, 13. 19-20.) [Quoted in *Vivādaratnākara*, p. 587.]

NOTES

'*Aniyuktāyām*,'—a loose woman.—'*Arikthabhājaḥ*,'—they do not receive the property of the 'owner of the soil'; or they do not obtain the property of the mother, or of the 'owner of the soil,' or of the mother's father,—as explained by the author of the *Prakāsha*. If the mother had been got over by 'the owner of the seed' by the payment of a fee to the 'owner of the soil,' then alone shall they offer the cake to the 'owner of the seed.'—(*Vivādaratnākara*, pp. 587-588.)

170. मनु 9. 104.] नियुक्तायामपि पुमान् नार्यां जातोऽविधानतः ।
नैवार्हः पैतृके रिक्थे पतितोत्पादितो हि सः ॥

The male child of even an "authorised" woman, if not begotten in the prescribed manner, is not entitled to the paternal property; as he has been procreated by outcasts.—(*Manu*, 9. 104.) [Quoted in *Vivādaratnākara*, p. 587.]

NOTES

'*Not in the prescribed manner*,'—*i.e.*, not wearing a white dress and other details.—'*He is not entitled to the property*,'—*i.e.*, he shall not be

treated as the ' *Kṣetraja* ' *son.*—The brother-in-law and the sister-in-law are both rightly regarded as ' outcasts,' on account of their having not obeyed the restrictions in the begetting of the son.—(*Medhātithi.*)

' *Avidhānataḥ* '—without observing such rules as ' besmearing the body with clarified butter ' and so forth.—' *Paternal,* '—belonging to the ' owner of the soil,' as also to the ' owner of the seed ' (*i.e.*, to either of his two ' fathers').—(*Sarvajñanārāyaṇa.*)

Even on an ' authorised ' woman, if a son is begotten without the due observance of such rules of ' *Niyoga* ' as ' besmearing the body with clarified butter ' and so forth,—that son is not entitled to inherit the property of the husband of his mother, the ' owner of the soil ' ; because he has been begotten by an ' outcast.'—(*Kullūka.*)

The son born of an ' authorised ' woman,—if he has been begotten without the due observance of the rules laying down the besmearing of the body with clarified butter and so forth,—is not entitled to inheritance.—' *Nāryām,*' a woman.—The word is ' *avidhānataḥ,*'—' *Patitotpāditaḥ,*' begotten by the brother-in-law who has made himself an ' outcast ' by transgressing the rules.—(*Rāghavānanda.*)

' *Avidhānataḥ,* '—without observing the rules in regard to the ' besmearing of the body with clarified butter ' and so forth.—(*Nandana.*)

' *Paitṛkam.* '—belonging to the ' father ' who is the ' owner of the soil.'—(*Rāmachandra.*)

' *Avidhānataḥ,* '—without observing the law of ' *Niyoga.*'—(*Vivādaratnākara,* p. 587.)

171. नारद] अपत्यमुत्पादयितुस्तासां याः शुल्कतो हृताः ।
अशुल्कोपनतायां तु क्षेत्रिकस्यैव तत् फलम् ॥

In the case of women who have been got over by the payment of a fee, the child belongs to the progenitor ; in that one who has not been got over by the payment of a fee, the product belongs to the ' owner of the soil.'—(*Nārada.*) [Quoted in *Vivādaratnākara.*]

NOTES

This refers to the ' remarried woman ' and to the ' loose woman.'—(*Vivādaratnākara,* p. 588.)

172. मनु 9. 191.] द्वौ तु यौ विवदेयातां द्वाभ्यां जातौ स्त्रिया धने ।
तयोर्यद् यस्य पित्र्यं स्यात् तत् स गृह्णीत नेतरः
[*v.l.*, नेतरत्] ॥

If two sons, born of two men, contend for the property in the mother's possession, each shall take, to the exclusion

of the other, what belonged to his own father.—(*Manu*, 9.191.) [Quoted in *Vivādaratnākara*, p 588; *Dāyabhāga*, p. 149; *Smṛtitattva* II, p. 169.]

NOTES

Sec. II, 280 and 211*a*.

One son is born of the woman's husband, and the other of a paramour or of her second husband;—the property of both the men lies with the mother;—in such case each of the two sons shall take the property that belonged to the owner of the seed of which he was born.—'*Netarat*' (*v.l.*, for '*netaraḥ*')—not any property that belonged to the mother's other husband.—(*Sarvajña-nārāyaṇa*.)

This refers to a case between the 'Legitimate' son and the 'Son of a Remarried Woman.'—On the death of the father of her 'Legitimate' son, the woman, finding her son to be a minor, has taken charge of her husband's property;—thereafter she obtains another son from her second husband;—on the death of this second husband also, she takes charge of his property, there being no one else to inherit it;—afterwards, if there is a dispute between the two sons in regard to the property in their mother's custody,—then each of them shall receive only what belonged to his own progenitor, not what belonged to the other's progenitor.—(*Kullūka*.)

If a widow who has a son, takes her husband's property, and then from her second husband she obtains another son and takes his property also,—then what shall belong to whom? The answer is that if there is a dispute between the 'Legitimate son' and 'the Son born of the Remarried Woman,'—each saying that he should take all the property and maintain the other,—'*Netaraḥ*,'—*i.e.*, one shall not receive what belonged to the progenitor of the other.—Or the text may be taken as referring to the woman's *Strīdhana*.—(*Rāghavānanda*.)

When a woman with a son has become wealthy and becoming remarried, obtains a son from her second husband also,—the division of property between her two sons shall be as herein laid down.—(*Nandana*.)

This refers to the case of one with two fathers.—If two persons born of two men contend about the property of the woman,—then out of the properties belonging to the two parents, what belonged to the father shall be taken by the son whose father is alive,—'*not the other*,'—*i.e.*, not the son born of her previous husband.—(*Rāmachandra*.)

The woman referred to here is either the Prostitute or the Harlot or the Remarried one,—says the *Pārijāta*.—(*Vivādaratnākara*, p. 588.)

If a man has given a property to a woman, the son born of the seed of that man shall take that property.—(*Dāyabhāga*, p. 149; also *Smṛtitattva* II, p. 169.)

173. गौतम] देवरवत्यामन्यजातमभागम् ।

To a woman who has a brother-in-law, if a child is born of another man,—that son is not entitled to inheritance.—(*Gautama*.) [Quoted in *Vivādaratnākara*, p. 587.]

NOTES

If a woman has her brother-in-law living, if a child is begotten on her by another man, that child has no share in the property.—(*Vivādaratnākara*, p. 587.)

174. मनु] कामं तु क्षपयेद् देहं पुष्पमूलफलैः शुभैः।
न तु नामापि गृह्णीयात् पत्यौ प्रेते परस्य तु ॥

On the death of her husband, the woman might well emaciate her body by living on recommended flowers, roots and fruits ; she should not even take the name of another man.—(*Manu*.) [Quoted in *Vīramitrodaya*, p. 603.]

NOTES

Manu has here forbidden the widow's having recourse to another man even for purposes of livelihood.—(*Vīramitrodaya*, p. 603.)

175. नारद] द्व्यामुष्यायणका दद्युर्द्वाभ्यां पिण्डोदके पृथक्।
रिक्थादर्धं समादद्युर्बीजिक्षेत्रिकयोस्तथा ॥

Dvyāmuṣyāyaṇa sons shall offer the cake and the water-oblations separately to both (the fathers) ; they shall take half out of the property of both, the owner of the seed and the owner of the soil.—(*Nārada*.) [Quoted in *Aparārka*, p. 733 ; *Vivādaratnākara*, p. 558 ; *Vīramitrodaya*, p. 605.]

NOTES

This refers to cases where the 'Legitimate son' is born after the birth of the 'Soil-born' son.—(*Aparārka*, p. 733.)

This refers to cases where the 'owner of the seed' has a Legitimate son of his own, and the 'owner of the soil' also has somehow got a 'Legitimate son' after the birth of the 'Soil-born' son.—(*Vivādaratnākara*, p. 559.)

'*Half*' means *their proper share*.—(*Vīramitrodaya*, p. 605.)

176. बृहस्पति] दत्तोऽपविद्धः क्रीतश्च कृतः शौद्रस्तथैव च।
जातिशुद्धाः कर्मशुद्धाः मध्यमास्ते सुता मताः ॥
[*v.l.* मध्यमास्ते सर्वे रिक्थहराः स्मृताः]
क्षेत्रजो गर्हितः सद्भिस्तथा पौनर्भवः सुतः।
कानीनश्च सहोढश्च गूढोत्पन्नस्तथैव च ॥

The Adopted, the Cast-off, the Bought, the Shūdra-born,—these sons, if pure in caste *and behaviour, are held to be of the middling class* [*v.l.*, are declared to be partakers of inheritance] ;—the Soil-born, the Son born of the Remarried Woman, the Maiden-born, the Son Obtained with the Wife, and the Secretly-born,—these sons have been deprecated by good men.—(*Bṛhaspati.*)

177. हारीत or यम] शूद्रापुत्राः स्वयन्दत्ता ये चैते क्रीतकास्तथा ।
सर्वे ते शौद्रिकाः पुत्राः काण्डपृष्ठा न संशयः ॥
स्वकुलं पृष्ठतः कृत्वा यो वै परकुलं व्रजेत् ।
तेन दुश्चरितेनासौ काण्डपृष्ठो न संशयः ॥
आपद्गतोऽभ्युपगतो यश्च स्याद्वैष्णवीसुतः ।
सर्वे ते मनुना प्रोक्ताः काण्डपृष्ठास्त्रयः सुताः ॥

Sons of the Shūdra wife, Self-offered sons and also those that have been Bought,—all these are called *Shaudrika* ; they are without doubt *Kāṇḍapṛṣṭhas.*—One who abandons his own family and goes over to another family is, by this very misdeed, a *Kāṇḍapṛṣṭha.*—One who has been obtained in a distressed condition, and the son of the Shūdra woman,—all these sons have been called *Kāṇḍapṛṣṭhas* by Manu.—(*Hārīta.*) [Quoted in *Vivādaratnākara*, pp. 552-553 ; *Vīramitrodaya*, p. 621.]

NOTES

'*Vaiṣṇavī*' here stands for the *Shūdra* woman.—(*Vivādaratnākara*, p. 553.)

'*Vaiṣṇavī*' stands for the *Shūdra* woman—says the *Kalpataru.*—(*Vīramitrodaya*, p. 621.)

Section II [3 (*b*)]

RELATIVE CLAIMS OF THE VARIOUS KINDS OF SONS

178. याज्ञवल्क्य 2. 132-133.]

(A) पिण्डदोंऽशहरश्चैषां पूर्वाभावे परः परः ।

(B) सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिः ॥

(A) Among these sons, the funeral cake shall be offered, and the share inherited, by each succeeding one only in the absence of the preceding ones.

(B) This rule has been declared by me in regard to sons belonging to the same caste as the father.—(*Yājñavalkya*, 2. 132-133.) [Quoted in *Vivādaratnākara*, p. 551; *Vīramitrodaya*, p. 614.]

(A) Among the sons, 'Legitimate' and the rest, enumerated in due order, the one that succeeds should be regarded as the offerer of the cake and the inheritor of the property, only in the absence of the one that has gone before; and if the preceding one is there, then, out of kindness towards the following one, provision should be made for his maintenance. The 'self-born one' (Manu) has declared—(*a*) '*Eka evaurasaḥ putraḥ pitryasya, etc.*';—(*b*) '*Ṣaṣṭhantu kṣetrajasyāmsham, etc.*';—(*c*) '*Aurasakṣetrajau putrau, etc.*';—(*d*) '*Aurasaḥ kṣetrajashchaiva, etc.*';—and Shaṅkha—'*Dvau bhāgau pituḥ, etc.*' . . . The conclusion deduced from all this is that if the 'Legitimate' son is there, the other kinds of sons receive shares only if the division is made during the father's lifetime,—after the father's death, it shall be as Yājñavalkya has declared;—that is, the succeeding one in the list shall receive a share only when the preceding one is not there. There is some diversity in the order of precedence among the sons—as enumerated in the several texts;—this is to be determined by the wish of the father if he is living; but after his death, the order must be as set forth by Yājñavalkya.—This is what has been indicated by Yājñavalkya himself in the second line, (B), where the phrase '*has been declared by me*' implies that the texts occurring in other *Smṛtis* are applicable in other cases;—*i.e.*, in cases of the division being made during the father's lifetime, where, the order depending upon the father's wish, no hard and fast rule can be laid down; while the matter becomes difficult in cases where the division comes after the father's death; and that is why this rule has been '*declared by me.*'—(*Vishvarūpa.*)

(A) Among all these primary and secondary sons, 'Legitimate' and the rest, the succeeding one is entitled to offer *Shrāddha* and inherit the property

only in the absence of the preceding.—Among the 'secondary sons,' it is only the 'Dattaka,' Adopted, that is permitted in the present age ; all the rest being excluded by the text of Shaunaka—'*Dattaurasētarēṣāntu, etc.*' .... Though everyone of the 'secondary' sons is entitled to inherit the property in the absence of the preceding one, yet Manu and other writers have declared only some of them to be entitled to inherit property ; and the meaning of this is that those alone that are spoken of as so entitled are to receive the property left by any *Sapiṇḍa* of their father's that may die childless.—(B) The meaning of the second line is that among the 'secretly born' and other sons, only those are to be accepted as 'sons' who are of the same caste as the father.—(*Aparārka.*)

(A) Having described all the primary and secondary sons, the author lays down the order of inheritance among them. Among the aforementioned twelve sons, it is only in the absence of the preceding one that the succeeding one is to be regarded as entitled to offer *Shrāddha* and inherit property.—Under this rule, in the presence of the 'Legitimate son' and the 'Son of the Appointed daughter,' the property shall go to the former ; but on this point Manu has laid down an exception—'*Putrikāyām kṛtāyāntu, etc.*' ;—in regard to the other sons also, Vashiṣṭha has declared that even in the presence of the preceding ones, they shall receive a quarter share—'*Tasminshchēt pratigṛhitē, etc.*' ; so also Kātyāyana—'*Utpannē tvaurasē putrē, etc.*'—Though Viṣṇu has spoken of the 'Maiden-born' and some others as '*not entitled to share in the property of their father,*' yet what is meant is that they are not entitled to the quarter share (laid down by *Vashiṣṭha*) when there is a 'Legitimate' son ; in cases, however, where there is no 'Legitimate' son, the 'Maiden-born' and the rest also do inherit the entire property of the father, in accordance with the words of Yājñavalkya.—As regards Manu's text—'*Eka evaurasaḥ putro, etc.*' (9. 163)—that refers to cases where the 'Adopted' and other sons are inimical to the 'Legitimate' son, or are devoid of qualities.—With regard to the 'Soil-born' son, Manu has laid down a special rule—'*Ṣaṣṭhantu kṣētrajasyāmsham, etc.*' (9. 164),—which means that if the 'soil-born' son is inimical to the 'Legitimate' son as well as 'devoid of qualities,' he is to receive the *sixth* part of a share, but if he has only one of these disqualifications, he shall receive the *fifth* part.—Manu has divided the sons into two groups of six each and declared the first group to be 'inheritors as well as kinsmen' and the second group to be only 'kinsmen, not inheritors' (9. 159-160) ;—what this means is that in the event of there being no other heirs to the property left by some of their father's *Sapiṇḍas* or *Samānodakas*, the *first* group of six,—and not the *second* group—shall inherit that property ; as regards 'kinsmanship,'—*i.e.*, liability to make offerings of water and so forth,—that belongs equally to both the groups.—So far as the inheriting of the *father's property* is concerned, all the sons are equally entitled, in the absence of the 'preceding ones'; as is clear from Manu's text—'*Na bhrātaro na pitaraḥ, etc.*' (9. 185).—In some of the texts of Vashiṣṭha and others, the sons are found to be mentioned in a different order. This diversity is to be explained as based upon the diversity in the comparative merits of the sons.—Gautama mentions the 'Son of the Appointed Daughter' as the *tenth* among the sons ; but that must refer to this

son being of a different caste.—Manu's text '*Bhrātṛṇāmekajātānām, etc.*' (9. 182) should be taken to mean that 'so long as it is possible to adopt a brother's son, no other person shall be adopted'; it does not mean that the 'brother's son' is really a *son*; as the latter view would be contrary to Yājñavalkya's text (2. 135), [where the 'brother's son' has been declared to be entitled to inherit property only in the event of the 'brother' not being there; while if he were a 'son,' then his title to inheritance would be prior to the title of, not only the 'brother,' but also of the 'father' and the rest—says the *Bālambhaṭṭi.*]—(B) The rule that 'the succeeding son shall inherit only in the absence of the preceding one' refers to cases where all the sons belong to the same caste as the father, not where they belong to different castes. As regards the 'Maiden-born,' 'Obtained with the Wife,' 'Secretly-born' and 'Born of a Remarried Woman,'—these can belong to 'the same caste as the father' only through their progenitor, not by themselves; because by themselves these have been declared to have no 'caste.'—The sons begotten by one on wives of lower castes—such as the *Mūrdhāvasikta* and the rest, for the Brāhmaṇa,—these would be included under the category of 'Legitimate sons'; so that the 'Soil-born' and other sons would be entitled to inherit only when these also would not be there.—As regards the Son born of a *Shūdra* wife, however, even though he would be a 'Legitimate' son, yet he would never inherit the entire property even in the absence of the others,—as declared by Manu—'*Yadyapi syāt tu satputro, etc.*' (9. 154) . . . . It is from this that it follows that the Brāhmaṇa's son born of his *Kṣattriya* and *Vaishya* wives would inherit the entire property in the absence of sons of the same caste as the father.—(*Mitākṣarā*, pp. 698—716.)

Among these twelve sons, one that succeeds is entitled to offer the cake and inherit the property only in the absence of the preceding.—The term '*amsha*,' 'share,' stands for the *entire* property, in so far as the rule applies to the 'Appointed daughter' and the 'Soil-born son,' as is clear from the following text from *Likhita* and the *Brahmapurāṇa*—'*Utpanne tvaurase putre, etc.*';—so also in reference to such 'Adopted,' 'Appointed,' 'Secretly-born,' and 'Cast-off' sons, as belong to the same caste as the 'father.'—The text of Manu—'*Eka evaurasḥ putro, etc.*'—is meant for cases where the 'Legitimate son' is possessed of very superior qualifications and the others have no qualifications.—The particle '*cha*' (in Yājñavalkya's text) has the collective sense; the meaning therefore is as follows:—*This rule,* that the succeeding one is to receive a share in the absence of the preceding, has been laid down by me in regard to *sons belonging to the same caste,*—*i.e.*, belonging to the three higher castes; as regards cases where the sons belong to different castes, even though the 'son of the Appointed Daughter' is there, the 'Soil-born son' of the same caste as the father shall receive a share.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

One and the same kind of 'son' is spoken of as 'kinsman and inheritor' in one text, and as 'kinsman, not inheritor' in another text;—this apparent contradiction may be explained on the basis of the son being possessed or devoid of qualifications. Similarly, in the enumeration of the twelve kinds of sons, different orders of sequence are found in different texts; this also is to be

explained on the understanding that the one placed earlier in the list is possessed of qualifications higher than those possessed by that placed later.—(*Vivādaratnākara*, pp. 551-552.)

As we have a repetition in '*paraḥ paraḥ*,' we should have a corresponding repetition as '*pūrvapūrvābhāvē*.'—(*Vīramitrodaya*, p. 614.)

179. मनु 9. 158—160.] पुत्रान् द्वादश यानाह नृणां स्वायम्भुवो मुनिः ।
तेषां षड् बन्धुदायादाः षड् दायादबान्धवाः ॥
औरसः क्षेत्रजश्चैव दत्तः कृत्रिम एव च ।
गूढोत्पन्नोऽपविद्धश्च दायादा बान्धवाश्च षट् ॥
कानीनश्च सहोढश्च क्रीतः पौनर्भवस्तथा ।
स्वयंदत्तश्च शौद्रश्च षडदायादबान्धवाः ॥

Among the twelve kinds of sons that Manu .... has mentioned,—six are "kinsmen" as well as "heirs," (to the property of *Sapiṇḍas* and *Samānodakas*) and six are "kinsmen," not "heirs."—The "Body-born," the "Soil-born," the "Adopted," the "Appointed," the "Secretly-born," and the "Cast-off,"—these six are "heirs" as well as "kinsmen."—The 'Maiden-born," the "Received along with the Wife," the "Bought," the "Begotten of a Remarried Woman," the "Self-offered" and the "Shūdra-born,"—*these six are only "kinsmen," not "heirs."* [Or, according to some, *these six are neither kinsmen nor heirs.*]—(*Manu*, 9. 158—160.) [Quoted in *Vishvarūpa*, p. 249; *Aparārka*, pp. 734-735; *Mitākṣarā*, p. 703; *Vivādaratnākara*, pp. 549-550; *Vivādachintāmaṇi*, p. 230; *Parāsharamādhava*, p. 349; *Vīramitrodaya*, p. 619; *Vibhāgasāra*, 13. 2—9.]

NOTES

The term '*bandhu*' here stands for '*bāndhava*,' kinsmen; they take the *gotra* and also the property; the reverse of this are the latter six.—Those that have been described as 'not heirs' are so only in the presence of the 'Legitimate son'; all that is meant by the distinction is that the first six are larger beneficiaries than the second six. Among the first group, all except the 'Legitimate son,' are equal beneficiaries, and less than these latter are the six in the second group; these latter are all equal, and there is no difference among themselves, due to their being mentioned earlier or later in the list.—(*Medhātithi* on 165.)

'*Bandhudāyādaḥ*'—'*Dāyāda*,' inheritors, of the property of '*bandhus*'—paternal uncles and the rest,—in the absence of their son, wife, daughter and other heirs.—The second group of six are '*not dāyāda*,' not

inheritors of property of the paternal uncle and others; even though these, uncle and others, may have no sons or wife or daughters, yet their property will go to the *Sagotras*, not to the latter group of sons. '*Kinsmen*,' are liable to make the water and other offerings. These six are '*neither heirs nor kinsmen*,' the compound '*adāyādabāndhavāḥ*' being expounded as '*adāyādāḥ abāndhavāḥ*.'—(*Sarvajñanārāyaṇa*.)

Among the twelve sons enumerated by Manu, the first six are '*kinsmen*' as also 'partakers of the *gotra* and the *property*'; and being *kinsmen*, they offer cake and water to *Sapiṇḍas* and *Samānodakas* (of the father) and also take his *gotra* and *property*;—that they inherit property is going to be declared in reference to all the twelve sons.—The second set of six do not take the *gotra* or *property*; they are only *kinsmen*, and as such perform the duty of kinsmen in offering water and other things.—It is not right to regard the second set as '*neither* kinsmen nor *heirs*' [as *Sarvajñanārāyaṇa*, and seemingly *Medhātithi* have done]; as they have been distinctly called '*bandhus*' (kinsmen) by Baudhāyana who calls them '*gotrabhājaḥ*.'—(*Kullūka*.)

'*Bandhudāyādāḥ*,'—those who take the *gotra*, offer the cake and water and inherit the property.—'*Adāyādabāndhavāḥ*,'—those who do not receive the property, but, like kinsmen, confer upon the father the benefit of offering water.—(*Rāghavānanda*.)

Manu divides the sons into two categories.—'*Bandhu-dāyādāḥ*'—kinsmen—those who offer the cake and take the *gotra*.—'*Adāyādabāndhavāḥ*';—both characters are negatived here, they are *neither* '*dāyāda*' *nor* '*bāndhava*'; but some people hold that it is only the '*dāyāda*,' 'heirship,' that is negatived, not the '*bāndhava*,' 'kinsmanship.'—(*Nandana*.)

The meaning is as follows:—The five sons, the 'Soil-born' (the 'Adopted,' the 'Appointed,' the 'Secretly-born' and the 'Cast-off') receive their shares also when the 'Legitimate' son is there; while the 'Maiden-born' and the rest get it only when the preceding ones are not there.—(*Vishvarūpa* on Yājñavalkya, p. 249.)

What this means is that when the father's *Sapiṇḍas* or *Samānodakas* die without leaving a nearer heir, their property goes to the first six, and not to the second six; but '*bāndhavatva*,' 'kinsmanship'—which consists in liability to make the water and other offerings, either through *Sagotra* or *Sapiṇḍa* relationship,—belongs equally to both the sets.—As regards the father's property, they are all equally entitled to inherit it; as is clear from Manu, 9. 185; [and therefore the term '*dāyāda*' in the text cannot mean '*heirs*' *to the father's property*] specially because it is well known as meaning '*heirs*' *to the property of persons other than the father*.—(*Mitākṣarā*, pp. 703—710.)

The liability to make the water and other offerings—due to the *Sagotra* or the *Sapiṇḍa* relationship—belongs to both the sets;—the distinction made by Manu should be taken to mean this; as for the inheriting of the father's property, to this all the sons are entitled, in the absence of those preceding them in the list; as declared by Manu himself (9. 185).—(*Parāsharamādhava*, p. 349.)

When the father's *Sapiṇḍas* or *Samānodakas* die without leaving a nearer heir, their property goes to the first six, not to the second six ; as regards their own father's property, *that* they are all entitled to inherit, in the absence of those preceding them in the list ; so that in regard to the father's property there could be no distinction made among them as to some being 'heirs' or others being 'not heirs.' Yājñavalkya (2. 133) and Manu (9. 185) have clearly asserted the title of all the secondary sons to inherit the father's property. Further, the term '*dāyāda*' is mostly used in the sense of persons inheriting the property of persons other than the father. As regards '*bāndhavatva*,' *kinsmanship*,—which consists in the liability to make the water and other offerings, either through *Sagotra* or *Sapiṇḍa* relationship—that belongs equally to both sets of sons.—Such is the meaning of Manu's texts.—(*Vīramitrodaya*, p. 619.)

180. नारद] औरसः क्षेत्रजश्चैव पुत्रिकापुत्र एव च ।
कानीनश्च सहोढश्च गूढोत्पन्नस्तथैव च ॥
पौनर्भवोऽपविद्धश्च दत्तः क्रीतः कृतस्तथा ।
स्वयञ्चोपगतः पुत्रा द्वादशैते प्रकीर्तिताः ॥
एषां षड् बन्धुदायादाः षडदायादबान्धवाः ।
पूर्वः पूर्वः स्मृतो ज्येष्ठः जघन्यो यो यथोत्तरः [*v.l.*, य उत्तरः]
क्रमादेते प्रवर्तन्ते मृते पितरि तद्धने ।
ज्यायसो ज्यायसोऽभावे जघन्यो यो य आप्नुयात् ॥

The Legitimate, the Soil-born, the Son of the Appointed Daughter, the Maiden-born, the one Got with the wife, the Secretly-born, the one Born of the Remarried Woman, the Cast-off, the Adopted, the Bought, the Appointed, the Self-offered,—these have been declared to be the twelve sons.—Among these, six are kinsmen and heirs, and six are kinsmen, not heirs.—Each preceding one is held to be *senior*, and each succeeding one, *junior* ; on the father's death, these have recourse to the father's property in due order,—the junior one receiving it in the absence of the senior.—(*Nārada*.) [Quoted in *Vivādaratnākara*, p. 551 ; *Vīramitrodaya*, p. 620 ; *Dvaitanirṇaya*, p. 38 ; *Vibhāgasāra*, 13. 2—6.]

NOTES

The meaning of the last line is that the succeeding one inherits the property only in absence of the preceding.

181. मनु 9. 184.] श्रेयसः श्रेयसोऽभावे पापीयान् रिक्थमर्हति ।
शङ्खलिखित] बहवश्चेत्तु सदृशाः सर्वे रिक्थस्य भागिनः ॥

On the failure of each superior kind of son, each next inferior one is entitled to inheritance; if there be several equal sons, all shall share the property.—(*Manu*, 9. 184.) [Quoted in *Vivādaratnākara*, p. 552; *Vīramitrodaya*, p. 621.]

NOTES

'*Sadṛshāḥ*,'—all 'legitimate,' or all 'adopted.'—The order in which the sons have been enumerated in Manu is not according to superiority; it is with a view to the grouping intended.—(*Sarvajñanārāyaṇa.*)

Viṣṇu has declared —'*Tēṣām pūrvaḥ pūrvaḥ shrēyān, etc.*'—The meaning is that among the 'Legitimate' and other sons, the succeeding one inherits the property in the absence of the preceding; and if the preceding is there, he will maintain the others. Such being the conclusion, the mention of the 'Shūdra-born son' among the twelve sons serves the useful purpose of indicating that he is not entitled to inherit property so long as the 'soil-born' or any other kind of son is there. Otherwise, if he had not been separately mentioned, as he would be a 'Legitimate' (body-born) son, he would inherit the father's property in the same manner as the sons born of the *Kṣattriya* and *Vaishya* wives of the father.—The general rule that the 'preceding' son shall maintain the 'succeeding' (in the list) pertains to cases not specially provided for; such as that the 'Legitimate' son shall give the 'fifth' or 'sixth' part of a share to the 'Soil-born' and the 'qualified Adopted' sons. - If there are many sons, all of the same kind—of 'the one born of a remarried woman' and the like,—they shall divide the property equally among themselves.—(*Kullūka.*)

'*Superior*,' the 'Legitimate' son; —'*Inferior*,' the 'Soil-born' and the rest. - '*Sadṛshāḥ*,' equal in caste; all of them being Brāhmaṇas, for instance.—'*They shall share the property*'—and also offer the cake.—The 'Shūdra-born' son has been mentioned along with the eleven kinds of sons, even though he is a 'legitimate son,' with a view to indicate that he is not entitled to inherit anything more than 'the tenth part of a share,' which the father might give him during his own lifetime; thus alone can this be reconciled with the law that 'the Shūdra-born son of the *Brāhmaṇa*, the *Kṣattriya* and the *Vaishya* shall not be entitled to inherit property.'—If this were not the intention, then the 'Kṣattriya-born' and 'Vaishya-born' sons also should have been mentioned separately (like the 'Shūdra-born' son). —'*Bahavashchēt, etc.*' - that is, even though 'the son born of the remarried woman' and the rest may be several, yet they are equally entitled to share the property.—(*Rāghavananda*).

'*Shreyasaḥ.*'—the primary son; —'*pāpīyān.*' the secondary son.—This text lays down the order of inheritance among the twelve kinds of sons.—(*Nandana.*)

If the elder and superior is not there, then alone will the '*pāpīyān*,' one of inferior qualifications, be entitled to inherit property.—*Sadṛshāḥ*,' belonging to the same caste.—(*Rāmachandra*).

'*Shrēyasaḥ shrēyasaḥ*'—the 'Legitimate' and the rest;—'*pāpīyān*,' the 'Soil-born' and the rest.—'*Sadṛshāḥ*,' 'equal' either in qualifications, or in the matter of their birth.—(*Vivādaratnākara*, p. 552.)

182. हारीत] षड् बन्धुदायादाः । साध्व्यां स्वयमुत्पादितः क्षेत्रजः पौनर्भवः कानीनः पुत्रिकापुत्रो गूढोत्पन्नश्चेति बन्धुदायादाः । दत्तः क्रीतोऽपविद्धः सहोढः स्वयमुपागतः सहसा दृष्टश्चेत्यबन्धुदायादाः ॥

Six are kinsmen and heirs.—(1) One begotten by oneself on his own good wife, (2) the Soil-born, (3) one born of the Remarried Woman, (4) the Maiden-born, (5) the Son of the Appointed Daughter, and (6) the Secretly-born are kinsmen and heirs; (1) the Adopted, (2) the Bought, (3) the Cast-off, (4) the one Obtained with the Wife, (5) the Self-offered, and (6) one seen by chance—are heirs, not kinsmen.—(*Hārīta.*) [Quoted in *Vivādaratnākara*, p 549.]

NOTES

'Kinsmanship' and 'heirship' are due to belonging to the same *gotra.*—Lakṣmīdhara, however, has explained '*bandhudāyāda*' as *bandhudāyān ādadati,*' 'one who receives inheritance from kinsmen.'—The sense however—which is that the first six are the 'principal' and the second six the 'subsidiary' sons—remains the same.—(*Vivādaratnākara,* p. 549.)

183. शङ्खलिखित] षट्सु दायादेषु विकल्पः । औरसः क्षेत्रजः पुत्रिकापुत्रः पौनर्भवः कानीनो गूढोत्पन्नश्चेति षट् पुत्रा बन्धुदायादाः पितृपितामहानामेकगोत्राः रिक्थपिण्डांशाः [*v.l.* रिक्थपिण्डोदकसामान्यात्, (b) रिक्थपिण्डौ सापिण्ड्यं च]. तेषामर्थं दशधा कुर्यात् । द्वौ भागौ पितुः द्वावौरसस्य त्रीन् [*v.l.*, त्रयः] क्षेत्रजपुत्रिकापुत्रयोः एकैकमितरेषाम् ॥ अपविद्धः सहोढः दत्तः क्रीतः शूद्रापुत्र उपनतश्च स्वयम्—इत्यदायादाः षडेव पुत्राः । तेषां सारानुसारतः । अत्र महर्षीणां परस्परविरुद्धभागग्रहणवादो निर्गुणस्वगुणवत्त्वदधिकगुणवत्त्वैरविरोधनीयः ॥

The allotment among the six 'heirs' is as follows:—The 'Legitimate,' the 'Soil-born,' the 'Son of the Appointed Daughter,' the 'Son of the Remarried Woman,' the 'Maiden-born,' and the 'Secretly-born,'—these six are kinsmen and heirs, belonging to the same *gotra* as the father and the grandfather, and partaking of their property and *Piṇḍa.* The property of these shall be divided into ten parts; two parts

shall go to the father, two to the 'Legitimate Son,' three to the 'Soil-born' and the 'Son of the Appointed Daughter,' and one part to each of the rest.—The 'Cast-off,' the 'one Obtained with the Wife,' the 'Adopted,' the 'Bought,' the 'Shudra-born,' and the 'Self-offered'—these are the six sons who are 'not heirs'; to them shall be assigned something in accordance with the extent of the property.—In this matter, the declarations of the great sages with regard to the exact shares to be taken by the sons are found to be divergent; these may be reconciled by taking the divergences as based upon the inferior or middling and superior qualities possessed by the several sons.—(*Shaṅkha-Likhita.*) [Quoted in *Vishvarūpa*, p. 249; *Vivādaratnākara*, p. 547.]

NOTES

'Three to the Soil-born and the Son of the Appointed Daughter,'—*i.e.*, each of these two will have a part and a half.—The assignment of the two shares to the father indicates that the other sons are to have the shares even when the 'Legitimate Son' is there, only when the division is made during the father's lifetime.—(*Vishvarūpa*, pp. 249-250.)

'*Vikalpa*,'—allotment of shares.—'*Bandhudāyādāḥ*,'—'*Kinsmen and heirs*,' *i.e.*, they take the *gotra* and the *Piṇḍa*, and also inherit the property. This is further explained—'*Belonging, etc.*'—The joint property being divided into ten parts, two parts shall go to the father, two to the 'Legitimate son,' a part and a half to the 'Soil-born Son,' a part and a half to the 'Son of the Appointed Daughter,' and one part each to the 'Son of the Remarried Woman,' the 'Maiden-born Son' and the 'Secretly-born Son.'—The second set of six shall be provided with maintenance. These do not inherit property, only when the former set of sons who are 'heirs' is there.—(*Vivādaratnākara*, pp. 547-548.)

184. विष्णु] एतेषां पूर्वः पूर्वः श्रेयान् । स एव दायहरः । स चान्यान् बिभृयात् ।

Among these, each preceding one is superior to the succeeding; he alone shall take the inheritance; he will support the others.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 551; *Vivādachintāmaṇi*, p 231; *Vibhāgasāra*, 14. 1 4.]

NOTES

The order among the sons is as follows:—*first* 'Legitimate,' *second* 'Soil-born,' *third* 'Son of the Appointed Daughter'; *fourth* 'Son of the remarried Woman'; *fifth* 'Maiden-born,' *sixth* 'Secretly-born,' *seventh* 'Son Obtained with the Wife,' *eighth* 'Adopted,' *ninth* 'Bought,' *tenth* 'Self-offered,' *eleventh* 'Cast-off,' *twelfth* 'Shūdra-born.' According to others, the 'Appointed'

is the *twelfth*, and the 'Shūdra-born' is the *thirteenth*. Viṣṇu has mentioned them in the order given in the next text.—(*Vivādachintāmaṇi*, pp. 231-232.)

Thus then, the order among the sons is as follows:—(1) Legitimate, (2) *Kṣétraja*, (3) Son of the Appointed Daughter, (4) Son of the Remarried Woman, (5) Maiden-born, (6) Secretly-born, (7) Taken with the Bride, (8) Adopted, (9) Bought, (10) Self-offered, (11) Cast-off, (12) *Pārashava*. Some people regard the *Pārashava* as the *thirteenth*.—But that cannot be right, as Manu has declared the number of sons to be *twelve* only. (*Vibhāgasāra*, 14. 1–5.)

185. विष्णु] औरसक्षेत्रजपुत्रिकापुत्रगूढोत्पन्नकानीनपौनर्भवदत्तक्रीत-
कृत्रिमस्वयमुपागतसहोढापविद्धाः । पिण्डदोंऽशहरश्चैषां
पूर्वाभावे परः परः ॥

The Legitimate, the Soil-born, Son of the Appointed Daughter, the Secretly-born, the Maiden-born, one Born of a Remarried Woman, the Adopted, the Bought, the Appointed, the Self-offered, the one Obtained with the Bride, the Cast-off,—among these the one succeeding offers the cake and inherits the property only in the absence of the preceding.—(*Viṣṇu*.) [Quoted in *Vivādachintāmaṇi*, p. 232; *Vibhāgasāra*, 14. 1—7.]

186. यम] पुत्रास्तु द्वादश प्रोक्ताः मुनिभिस्तत्त्वदर्शिभिः ।
तेषां षड् बन्धुदायादाः षडदायादबान्धवाः ॥
स्वयमुत्पादितस्त्वेको द्वितीयः क्षेत्रजः स्मृतः ।
तृतीयः पुत्रिकापुत्र इति धर्मविदो विदुः ।
पौनर्भवश्चतुर्थस्तु कानीनश्चैव पञ्चमः ॥
गृहे च गूढेत्पन्नः षडेते पिण्डदाः स्मृताः ॥
अपविद्धः सहोढश्च दत्तः कृत्रिम एव च ।
पञ्चमः क्रीतकः पुत्रो यश्चोपनयते स्वयम् ।
इत्येते सङ्करोत्पन्नाः षडदायादबान्धवाः ॥

The wise sages have described twelve sons; of these, six are kinsmen and heirs; and six kinsmen, not heirs.—The first is the one begotten by oneself, the second is the Soil-born, the third is the Son of the Appointed Daughter,—so say those versed in law; the one Born of the Remarried Woman is the fourth, the Maiden-born the fifth, and the one Born Secretly in the house;—these have been declared to be *offerers of the cake*.—The Cast-off, the one Obtained with the Bride, the

Adopted, the Appointed, the Bought as the fifth, and the Self-offered,—these mixture-born ones are kinsmen, not heirs.—(*Yama.*) [Quoted in *Vivādachintāmaṇi*, p. 230; *Vibhāgasāra*, 13. 2-3.]

187. गौतम] पुत्रा औरसक्षेत्रजदत्तापविद्धकृत्रिमगूढोत्पन्ना रिक्थभाजः । कानीनसहोढपौनर्भवपुत्रिकापुत्रस्वयन्दत्तक्रीता गोत्रभाजश्चतुर्थांशिन औरसाद्यभावे ।

The following sons are inheritors of property: the Legitimate, the Soil-born, the Adopted, the Cast-off, the Appointed and the Secretly-born.—The Maiden-born, the one Obtained with the Bride, the one Born of a Remarried Woman, the Son of the Appointed Daughter, the Self-offered and the Bought are sons that take the *gotra* and receive the fourth part of a share, in the absence of the Legitimate and other sons.—(*Gautama.*) [Quoted in *Vivādaratnākara*, p. 548.]

NOTES

'*Take the gotra,*'—*i.e.*, perform the functions of the 'son' by offering cakes, water and other libations.—This assertion, that the Maiden-born and the rest are only '*partakers of the gotra,*' only means that, if anyone of the aforesaid six sons—Legitimate and the rest—is present, they are not entitled to any share in the property.—'*Receive the fourth part of a share,*'—*i.e.*, if the father is living and if none of the other set of sons - Legitimate and the rest—is there ; - if the father is not living, they are entitled to receive the entire property in due order, in the absence of the Legitimate and other sons.—Here these sons are declared to be entitled to 'a fourth part,' and in the *Brahmapurāṇa*, to 'fifth and lesser parts'; these two statements may be reconciled by taking the former as referring to cases where these sons are possessed of superior qualifications, and the latter to those where they have inferior qualifications.—In the text of Shaṅkha-Likhita the Son born of the Remarried Woman and the Maiden-born son are spoken of as entitled to shares, while in that of Gautama this has been denied ; and these statements are to be reconciled by taking the former as referring to cases where these sons are of the same caste as the father, and the latter to those where they are of different castes ;— as declared in the text of *Kātyāyana* that 'sons belonging to castes different from the father's are entitled only to food and clothing.'—In the same manner may be reconciled the difference between Shaṅkha-Likhita declaring the Cast-off and the Adopted sons as being 'not heirs,' and Gautama declaring them to be 'heirs.'—(*Vivādaratnākara*, pp. 548-549.)

188. बौधायन] औरसं पुत्रिकापुत्रं क्षेत्रजं दत्तकृत्रिमौ ।
गूढं चैवापविद्धं च रिक्थभाजः प्रचक्षते ॥
कानीनं च सहोढं च क्रीतं पौनर्भवं तथा ।
स्वयन्दत्तं च शौद्रं च [*v.l.*, निषादं च] गोत्रभाजः प्रचक्षते ॥

The Legitimate Son, the Son of the Appointed Daughter, the Soil-born son, the Adopted son, the Appointed son, the Secretly-born son and the Cast-off son,—these they declare to be *partakers of the property*. The Maiden-born son, the Son Obtained with the Bride, the Bought son, the Son Born of a Remarried Woman, the Self-offered son and the Shūdra-born son (*v.l.*, *Niṣāda*),—these they declare to be *partakers of the gotra*.—(*Baudhāyana*.) [Quoted in *Vivādaratnākara*, p. 550; *Vivādachintāmaṇi*, p. 231; *Vīramitrodaya*, p. 620; *Vibhāgasāra*, 13. 2—11.]

189. देवल] एते द्वादशपुत्रास्तु सन्तत्यर्थमुदाहृताः ।
आत्मजाः परजाश्चैव लब्धा यादृच्छिकास्तथा ॥
तेषां षड् बन्धुदायादाः पूर्वेऽन्ये पितुरेव षट् ।
विशेषश्चापि पुत्राणामानुपूर्व्यां विशिष्यते ॥
सर्वे ह्यनौरसस्यैते [*v.l.*, साश्चैते] पुत्रा दायहराः स्मृताः ।
औरसे पुनरुत्पन्ने ज्यैष्ठ्यं तेषां निवर्तते ॥
तेषां सवर्णा ये पुत्रास्ते तृतीयांशभागिनः [*v.l.*, तदीयांशभागिनः]
हीनास्तमुपजीवेयुर्ग्रासाच्छादनसम्भृताः ॥

These are the twelve sons that have been declared to serve the purpose of propagating the race; some of them are born of one's own self, some born of others, some acquired and some obtained by chance. Among these, the first six are kinsmen and heirs of the father; there is a distinction made among these sons on the basis of the order in which they are mentioned; all these have been declared to be inheritors of the property of the father who has no Legitimate Son; the seniority of these disappears as soon as the Legitimate Son is born;—those among them that belong to the same caste as the father receive *the third part of a share* [*v.l.*, *their shares*]; those belonging to lower castes shall live under the former, being supported with food and clothing.—(*Devala*.) [Quoted in *Vivādaratnākara*, p. 550;

Vivādachintāmaṇi, p. 231; *Dāyabhāga*, p. 147; *Vīramitrodaya*, p. 620; *Vivādachandra*, 24. 1–8; *Dvaitanirṇaya*, p. 37; *Smṛtitattva* II, p. 168; *Vibhāgasāra*, 14. 1. 1; *Dāyanirṇaya*, 4. 1–5.]

NOTES

Devala has made this declaration after having named the following sons: Legitimate, Born of the Appointed Daughter, Soil-born, Maiden-born, Secretly-born, Cast-off, Obtained with the Bride, Born of a Remarried Woman, Adopted, Self-offered, Appointed and Bought.—(*Vivādaratnākara*, p. 550; *Vivādachintāmaṇi*, p. 231.)

The six sons 'legitimate' and the rest, are partakers of the property—not only of the father,—but also of *Sapiṇḍas* and other kinsmen; the others inherit the property of the father only, not of *Sapiṇḍas*. And of the father, they take the entire property, if there is no 'legitimate' son. If there is a 'legitimate' son, then they, if of the same caste as the father, are entitled to the third part of a share.—(*Dāyabhāga*, p. 147.)

'*Anaurasa*,'- one who has no 'legitimate' son.—'*Ātmajāḥ*, etc.'- among the sons enumerated, which comes under which of these categories would be clear from their definitions.- (*Vīramitrodaya*, p. 620.)

This is with reference to all the twelve kinds of sons. -'*Dāyaharāḥ*'; entitled to the full share. Among the sons besides the Legitimate, those who belong to the same caste as the father receive a third part of the share if a Legitimate Son is there.—(*Smṛtitattva* II, pp. 168-169.)

'*Inheritors of the property*,'—*i.e.*, entitled to full shares;—those of these that are of the same caste as the father are entitled to a share equal to the third part of the share of the 'Legitimate' son.—'*Among these, the first six, etc.*'—the first six inherit the property, not only of the father, but of all *Sapiṇḍas* also,- while the latter six inherit the property of the father and mother only.—The law on this point is briefly as follows -(1) the 'Legitimate' son, (2) the son of the Legitimate son, (3) the grandson of the Legitimate son;—(4) the son of the dead son and the grandson of the dead son;—(5) the 'Appointed Daughter,' (6) the grandson of the Appointed Daughter;—if a 'Legitimate son' is born after the 'appointing' of a daughter, this son and the daughter have equal rights; and so on. In the absence of all these, the property is to go to the *Kṣetraja* and other sons.—(*Dāyanirṇaya*, 4. 1–9.)

190. बृहस्पति] एक एवौरसः पुत्रो [*v.l.*, पित्र्ये] धने स्वामी प्रकीर्तितः ।
तत्तुल्या पुत्रिका प्रोक्ता भर्तव्यास्त्वपरे सुताः ॥

The Legitimate Son alone has been declared to be the owner of the *property* (*v.l.*, *father's property*); equal to him is the Appointed Daughter; the other sons are to be supported.—(*Bṛhaspati*.) [Quoted in *Vivādaratnākara*, p. 541; *Vivādachandra*, 23. 2–8; *Vivādachintāmaṇi*, p. 233; *Dvaitanirṇaya*, p. 38; *Vīramitrodaya*, p. 614; *Vibhāgasāra*, 14. 2–6.]

NOTES

'*Aparē*,'—'the other sons,' who have been declared to be entitled to no share in the property.—(*Vivādachandra*, 23. 2–8.)

191. मनु 9. 163.] एक एवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुः ।
शेषाणामानृशंस्यार्थं प्रदद्यात्तु प्रजीवनम् ॥

The Legitimate Son is alone the owner of the paternal state; but in order to avoid unkindness, he shall provide subsistence for the rest.—(*Manu*, 9. 163.) [Quoted in *Vishvarūpa*, p. 249; *Mitākṣarā*, pp. 701, 706; *Vivādaratnākara*, p. 542; *Vivādachintāmaṇi*, p. 233; *Vivādachandra*, 24. 1–3; *Smṛtichandrikā*, p. 667; *Parāsharamādhava*, p. 348; *Dvaitaparishiṣṭa*, p. 38; *Dāyabhāga*, p. 148; *Vīramitrodaya*, pp. 616, 619; *Vibhāgasāra*, 14. 2–8.]

NOTES

If the Legitimate Son is there, all the others—Soil-born and the rest—are not 'heirs'; and they shall receive from the Legitimate son only a subsistence allowance.—'*In order to avoid unkindness*,'—*i.e.*, sin; the Legitimate Son would incur sin if he did not make provision for the subsistence of the other sons.—(*Medhātithi*.)

'*Eka ēva, etc.*'—This only when there are more sons than one, and of several kinds.—(*Sarvajñanārāyaṇa*.)

This text refers to a case where the man, through disease or other causes, having failed to have a Legitimate Son, has obtained the 'soil-born' and other sons,—but later on, having been cured, by medication, of the said disabilities, has a Legitimate son born to him.—In such a case, the Legitimate Son alone is the owner of the father's property.—'*For the rest*,'—*i.e.*, all the other sons, except the 'soil-born,' for which latter 'a sixth part of the share' is going to be definitely assigned;—in order to avoid becoming sinful, he should provide food and clothing.—(*Kullūka*.)

This verse prescribes provision of food and clothing for the Adopted and other sons, excepting the Soil-born.—'*Vasunaḥ*,' of the property;—'*Pitryasya*,' of what belongs to the father.—'*Prajīvanam*,' subsistence.—(*Rāghavānanda*.)

'*Of the rest*,'—of the Soil-born and the other sons.—*Ānṛshaṁsyārtham*'—in order to avoid connection with sin.—(*Rāmachandra*.)

This text lays down that in cases where the Legitimate and Soil-born sons have the same 'father,' the inheritance goes to the Legitimate son, not to others.—The implication of the second line is that by failing to provide subsistence for them, the man would incur sin.—(*Nandana*.)

The term '*aurasa*,' 'legitimate,' here stands for all kinds of sons, 'soil-born' and the rest; the meaning being that whichever individual, in the capacity of 'son,' is entitled to inherit the 'father's property' shall take the

whole of it; for the rest he shall provide subsistence only.—(*Vishvarūpa*, p. 249.)

This rule should be understood to apply to those cases where the Adopted and other sons are inimical to the Legitimate Son and devoid of qualifications. For the Soil-born, Manu himself (9. 164) has laid down the *sixth* or the *fifth* part of a share. [‘*Eka ēva*’ means the *Primary son* alone, thus providing a reason for what is asserted here,—‘because he is the *primary* son’—says the *Bālambhaṭṭi*].—(*Mitākṣarā*, p. 701.)

‘*For the rest*,’—that is, for all those who have been declared, in various texts, as not entitled to a share in the property.—‘*Ānṛshamsya*,’—kindness, pity.—‘*Prajīvanam*,’—subsistence, maintenance.—(*Vivādaratnākara*, p. 542.)—Taken along with Kātyāyana's text—‘*utpannē tvaurasē putrē, etc.*’—this text implies that the ‘mere subsistence’ is meant for such secondary sons as do not belong to the same caste as the father's.—(*Ibid.*, p. 545.)

‘*Ānṛshamsya*,’—is pity.—‘*Prajīvanam*,’ subsistence.—(*Vivādachintāmaṇi*, p. 234.)

This refers to cases where the ‘legitimate’ son was born before the others were taken.—(*Vivādachandra*, 24. 1—3.)

This is meant only to eulogise the ‘legitimate’ son, and not to forbid ‘the fourth of a share’ that has been assigned to the other sons (in other *Smṛtis*).—(*Parāsharamādhava*, p. 348.)

In reality, if the Legitimate Son is there, the Appointed and other sons receive only the third part of a share;—the term ‘*Shēṣāṇām*,’ ‘of the rest,’ refers to sons belonging to castes different from that of the father.—[*Dvaitanirṇaya*, p. 38.]

Those who belong to castes lower than that of their father or ‘legitimate’ brother are entitled only to food and clothing.—(*Dāyabhāga*, p. 148.)

This should be taken to mean that in cases where the Adopted and other sons are inimical to the Legitimate Son and are devoid of qualifications, they shall not receive ‘the fourth part of a share’ and the rest (that have been assigned to them in some texts); and also as applying to the ‘maiden-born’ and other sons; because it is these latter that have been declared to be entitled to food and clothing only, when the Legitimate Son is there.—(*Vīramitrodaya*, p. 616.)

‘*Ānṛshamsya*,’—maintenance. (*Vibhagasāra*, 14. 2—8.)

192. मनु 9. 165.] औरसक्षेत्रजौ पुत्रौ पितृरिक्थस्य भागिनौ ।
दशापरे तु क्रमशो गोत्ररिक्थांशभागिनः ॥

The Legitimate and the Soil-born sons are entitled to inherit the father's property; while the other ten inherit the *gotra* and a share in the property in due order.—(*Manu*, 9. 165.) [Quoted in *Vishvarūpa*, p. 249; *Aparārka*, p. 733; *Vivādaratnākara*, p. 544; *Smṛtitattva* II, p. 169.]

NOTES

The first part of this text is only a reiteration of what has been said before; it cannot be taken as an independent injunction; specially because the soil-born son does not stand on an equal footing with the Legitimate Son.—The other sons inherit the *gotra*, and they inherit also '*a share in the property*'; it has been already explained that this 'share' consists of mere 'subsistence.' But the case of the Adopted Son stands on the same footing as the Soil-born son.—'*In due order*,'—*i.e.*, the Legitimate and the Soil-born sons inherit the property simultaneously,—while among the rest, the succeeding one inherits only in the absence of the preceding one.—(*Medhātithi.*)

'*Pitṛrikthasya*,'—of the self-acquired property of the father.—The '*aurasa*,' 'legitimate,' son mentioned here includes the 'son of the appointed daughter, also.—'*The other ten, etc.*'—They inherit the *gotra* and a share in the property acquired by the grandfather and other ancestors,—and they do not receive any share in the property acquired by the father himself.—Others have explained the second sentence to mean that these other sons inherit the *gotra* and a share in the property *of the father himself*,—such share being in the form of mere *subsistence*.—(*Sarvajñanārāyaṇa.*)

The Legitimate and the Soil-born sons are entitled, in the manner described before, to inherit the father's property; the other ten—the Adopted and the rest—inherit the *gotra*, and also a share in the property,—'in due order,'—*i.e.*, the succeeding one receiving it in the absence of the preceding one.—(*Kullūka.*)

The first half reiterates the title of the Legitimate and Soil-born sons, and the second half declares that in the absence of the said two sons, the other sons shall inherit the property in the order that each succeeding one shall receive it only in the absence of the preceding one.—(*Rāghavānanda.*)

'*The other ten*,'—the Adopted, the Appointed and others are entitled to the *gotra* and also to the *property*,—their share in the *property* being 'mere subsistence.'—Others have explained the first half to mean that the Soil-born son is entitled to the same share as the Legitimate Son, and the second half to declare that the other ten are entitled to only a *part* of the inheritance.—(*Nandana.*)

'*The other ten*' sons—the Adopted and the rest—are entitled to inherit the *gotra* and a share in the property;—'*in due order*,' *i.e.*, the succeeding one inheriting only in the absence of the preceding.—(*Rāmachandra.*)

The term '*Kṣētraja*,' 'soil-born,' is meant to stand for 'the son of the appointed daughter'—here, as also in Manu, 9. 164. He is literally 'soil-born,' being born of the 'soil' given by the father to a man for the purpose of begetting a child for the father himself. This son shall be an equal sharer with the Legitimate Son of his mother's father in the property of this latter; and where the 'soil-born' son is spoken of (in 9. 164) as receiving 'the sixth or fifth of a share,' that refers to the property of the *progenitor* (not of the mother's father.)—(*Vishvarūpa*, p. 249.)

This should be taken as applicable to cases where the Legitimate Son is not possessed of any qualifications and the Soil-born son is possessed of superior qualifications; because both have been declared here as receiving equal shares.—If a Legitimate Son is born after the ten sons—other than the

Legitimate son, the Soil-born Son and the son of the Appointed Daughter,—have been obtained, then the Legitimate Son shall receive the entire property, the others receiving only a portion. But the *gotra* shall be the same for these as for the Legitimate Son.—(*Aparārka*, p. 783.)

The first half is a reiteration of what has gone before.—'*The ten,*'—the Adopted and the rest;—'*in due order,*'—*i.e.*, the succeeding one in the absence of the preceding one;—'*shall inherit the gotra,*'—*i.e.*, shall perform the functions of *jñātis*—says *Asahāya* ;—'*shall inherit a share in the property,*'- *i.e.*, in the father's property ;—this shall be so only in the absence of the Legitimate Son, the Son of the Appointed Daughter and the Soil-born son.—(*Vivādaratnākara*, p 544.)

The title to inherit the *gotra* and the *property* devolves first of all upon the Son of the Appointed Daughter and then on the Adopted Son,—because these two are the sons that propagate the race of, and make offerings to, the deceased owner of the property.—'*In due order,*'—*i.e.*, the succeeding—inheriting only in the absence of the preceding—shall not inherit the *gotra* and the *property*.—(*Smṛtitattva II*, p. 169.)

193. मनु 9. 162.] यद्येकरिक्थिनौ स्यातामौरसक्षेत्रजौ सुतौ ।
यद् यस्य पैतृकं रिक्थं स तद् गृह्णीत नेतरः [*v. l.*, नेतरत्]॥

If the Legitimate and the Soil-born sons are both entitled to inherit the same property,—each shall receive that property which belongs to his own father (progenitor), and not the other.—[*Manu*, 9. 162.) [Quoted in *Aparārka*, p. 739 ; *Vivādaratnākara*, p. 543 ; *Vivādachandra*, 24. 1.1 ; *Dāyabhāga*, p. 148 ; *Vīramitrodaya*, p. 617 ; *Smṛtitattva* II, p. 169, where second line has been quoted along with the second half of Yājñavalkya, 2. 120—the two lines together occurring as Viṣṇu 17. 23.]

NOTES

An impotent man, having obtained a son from his 'authorised' wife through another man, may happen to have his impotence cured by medicines, and then himself beget his own 'legitimate' son ; in this case, the former son would receive the property of his progenitor, who may be called his 'father' on the ground of his being the cause of his birth ; and on the same ground the child would be called his 'son,' but only in the secondary sense ; since in reality he is the 'soil-born' son of the other man.—In this case, the property of the father having been taken by the Legitimate Son, the said 'soil-born' son inherits the property of his progenitor, (*a*) if this latter does not happen to have any child born to him, (*b*) if he has not given away his property to any one, and (*c*) if he has no *Sapiṇḍa* relations.—Others have explained the text to mean as follows :—While an 'heir' is already there,—if a 'soil-born' son happen to be born, this latter shall inherit the property of his progenitor, not that

of this mother's husband, so long as the Legitimate Son of the latter is there.—(*Medhātithi.*)

If an undivided brother has died, and his younger brother has taken his property and begotten a son on that brother's wife, and this younger brother has a son of his own ;—when this brother dies and his property comes to be divided, what the aforesaid 'soil-born son' of the elder brother will get will be only the property that had belonged to his mother's husband ; he shall have no share in the property of the younger brother from whose seed he has been born.—(*Sarvajñanārāyaṇa.*)

This refers to the case (mentioned by Yājñavalkya) where a man having no son of his own begets a son on another woman by 'authorisation.'—If, after the birth of this 'soil-born' son, a 'legitimate' son is born to him, then in that case these two sons—the Legitimate and Soil-born—are '*entitled to inherit the same property*' ; even so, though they are both entitled to inherit the property of one and the same father, yet, each of them shall receive only what belongs to his *progenitor*, and the Soil-born son shall not receive the property of his mother's husband. The declaration of Manu that the Legitimate son shall give the sixth of a share to the Soil-born son refers to cases where there are many sons. Similarly, when Yājñavalkya speaks of the Soil-born son as inheriting the property of both fathers ;—it should be taken as referring to cases where the mother's husband has no 'legitimate' son. [Kullūka proceeds to criticise Medhātithi. Though the text of Medhātithi is corrupt, yet it is clear enough to show that Kullūka has misrepresented him.]—(*Kullūka.*)

In a case where a man gets a 'legitimate' son after he has got a 'soil-born' son in the proper form,—that man's property shall go to the Legitimate son.—'*Ekarikthinau,*'—entitled to inherit the property *of the same father.*—'*Netaraḥ*'—*i.e.*, not the Soil-born son. When Yājñavalkya speaks of the Soil-born son as the 'heir' of both his fathers, he is referring to a case where there is no 'legitimate' son ; if there is a Legitimate Son, he will take the property of the mother's husband, and the Soil-born son shall take the property of his progenitor.—(*Rāghavānanda.*)

'*Ekarikthinau*'—undivided.—If in a family, between two brothers, one has a legitimate, and another a 'soil-born' son,—and the two brothers have died after having divided their property,—and after their death, their father dies ;—it is to this case that the present text refers.—(*Nandana.*)

If '*eka,*' one man has '*rikthinau,*' two sons,—one Legitimate and the other Soil-born,—then the Legitimate Son shall take the property of his father ; the Soil-born son shall not take that property.—(*Rāmachandra.*)

This text asserts the title of the 'soil-born' *Dvyāmuṣyāyaṇa* to the property of the progenitor.—(*Aparārka.*)

The 'soil-born' son meant here is the one born of an '*unauthorised*' person.—'*Paitṛkam riktham,*'—the property that the father had given to the mother for the maintenance of that son.—Others, however, take this verse in its straightforward literal sense :—'Each shall take the property that belongs to his father.'—(*Vivādaratnākara*, p. 543.)

On the death of the younger brother who was the progenitor of the Soil-born son (of his elder brother),—if a partition takes place between the Legitimate Son of that younger brother and the 'soil-born' son (begotten by him)

of his elder brother, each of these shall take what belonged to his father (*i.e.*, the Legitimate Son shall receive the property of the younger brother and the Soil-born Son shall receive the property of the elder brother.—(*Vivādachandra*, 23. 2—10.)

This lays down the law for cases where the partition is between the 'legitimate son' and the 'soil-born son' begotten '*without authorisation.*' The meaning is that each shall receive the property of the man from whose seed he has been born (*i.e.*, his progenitor); and the son born of the seed of one man shall not receive the property of the other man.—(*Dāyabhāga*, p. 148.)

'*Ekarikthinav*,'—heirs born of the same mother.—Each shall take the property of the man from whose seed he has been born; and the son born of the seed of one man shall not receive the property of the other man.—(*Smṛtitattva* II, p. 169.)

194. ब्रह्मपुराण] समग्रधनभोक्ता स्यादौरसोऽपि जघन्यजः ।
त्रिभागं क्षेत्रजो भुङ्क्ते चतुर्थं पुत्रिकासुतः ॥
कृत्रिमः पञ्चभागं तु षड्भागं गूढसम्भवः ।
सप्तांशकं चापविद्धः कानीनश्चाष्टमांशकम् ॥
नवभागं सहोढस्तु क्रीतो दशममश्नुते ।
पौनर्भवस्तु परतो द्वादशं स्वयमागतः ॥
त्रयोदशं स्वभागं तु शूद्रो भुङ्क्ते पितुर्धनात् ॥

The Legitimate Son, even though born later, should receive the entire estate. The Soil-born shall receive the third of a share; the Son of the Appointed Daughter, the fourth; the Appointed, the fifth; the Secretly-born, the sixth; the Cast-off, the seventh; the Maiden-born, the eighth; the one Obtained with the Bride, the ninth; the Bought, the tenth; the Son of the Remarried Woman, the next lower (eleventh); the Self-offered, the twelfth; and the Shūdra-born, the thirteenth of a share out of the father's estate.—(*Brahmapurāṇa*.) [Quoted in *Vivādaratnākara*, pp. 545-546; *Dvaitanirṇaya*, p. 38; *Vīramitrodaya*, pp. 616, 618.]

NOTES

For the 'maiden-born,' (*a*) Bṛhaspati has laid down 'the sixth of a share,' in the text '*Kṣetrajādyāḥ sutāshchānyē, etc.*';—(*b*) Hārīta has laid down 'the twenty-first of a share,' in the text '*Vibhajiṣyamāṇa ēkavimsham, etc.*';—(*c*) the present text of the *Brahmapurāṇa* lays down the 'eighth part';—(*a*) refers to a case where the son possesses very superior qualifications; (*b*) to a case where he is entirely devoid of all qualifications; (*c*) to a case

where he possesses middling qualifications.—Similarly, for 'the son of the remarried woman,' (*a*) Bṛhaspati prescribes 'the seventh part'—in the same text as above;—(*b*) the *Brahmapurāṇa* text, the 'eleventh part';—(*c*) Hārīta, the 'twentieth part,' in the same text as above;—here also, (*a*) refers to a case where the son is possessed of very superior qualifications, (*b*) to one where he is possessed of ordinary qualifications, and (*c*) to one where he is entirely devoid of all qualifications.—The *Brahmapurāṇa* text is meant to supply the answer to the question as to what each of the thirteen kinds of sons inherits from the father.—(*Vivādaratnākara*, p. 546.)

As regards 'the son of the appointed daughter,' (*a*) Manu has declared him to be an equal sharer with the 'legitimate son'; (*b*) while the present text assigns to him only 'the fourth part'; and again, in regard to the 'soil-born' son, (*c*) Manu has assigned to him the 'sixth' or the 'fifth' part; (*d*) while the present text assigns to him the 'third' part.—These inconsistencies are to be explained by taking (*b*) as referring to cases where the 'son of the appointed daughter' is entirely devoid of qualifications and belongs to a caste different from that of the 'father,'—and (*d*) as referring to cases where the 'soil-born' son is possessed of very superior qualifications and is very friendly (to the Legitimate Son).—(*Vīramitrodaya*, p. 616.)—The whole of this text is to be taken as qualified by 'the presence of the legitimate son.' Whenever there appears to be a difference between the share assigned to a particular son in this text and that assigned to the same in other texts, the discrepancy is to be explained as based upon the divergence in the qualifications possessed by him.—The expressions '*ṣaḍbhāgam*,' '*navabhāgam*,' and the like are here to be explained as the '*sixth* part' (*ṣaṣṭham bhāgam*), the '*ninth* part' (*navam bhāgam*) and so forth; otherwise (if they were taken as they stand, meaning '*six* parts,' '*nine* parts,' and so forth), it would be impossible to make them fit in with the sense of the passage.—'*Parataḥ*,' 'the next lower'—to the 'tenth.'—'*Shaudraḥ*,' 'Shūdra-born son.'—(Ibid., p. 618.)

195. हारीत] विभाजेष्यमाण एकविंशं कानीनाय दद्यात्—विंशं पौनर्भवाय—एकोनविंशं द्व्यामुष्यायणाय—अष्टादशं क्षेत्रजाय—सप्तदशं पुत्रिकापुत्राय—इतरानौरसाय दद्युः ।

When dividing the property, one shall give the twentieth part to the maiden-born son, the twentieth part to the Son of the Remarried Woman, the nineteenth part to the Secretly-born son, the eighteenth part to the Soil-born son, the seventeenth part to the Son of the Appointed Daughter, and the remaining ones to the Legitimate Son.—(*Hārīta*.) [Quoted in *Vivādaratnākara*, p. 545; *Viramitrodaya*, p. 618.]

NOTES

'*Dvyāmuṣyāyaṇa*'—the Secretly-born son.—'*The remaining ones*'—*i.e.*, sixteen shares.—This lays down the rules of division among the said sons

when they belong to the same caste as the father, and refers to cases where the other five are possessed of qualifications very inferior to those possessed by the 'legitimate' son.—(*Vivādaratnākara*, pp. 545, 546.)

196. बृहस्पति] क्षेत्रजाद्याः सुताश्चान्ये पञ्चषट्सप्तभागिनः ।

The Soil-born and the other sons are entitled to the fifth, sixth and seventh parts.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 545.; *Vīramitrodaya*, p. 618.]

NOTES

'*Soil-born and the other sons,*'—*i.e.*, the Soil-born, the Maiden-born, and the Son of the Remarried Woman respectively get the fifth, sixth and seventh parts.—(*Vivādaratnākara*, p. 545.)

197. वसिष्ठ] यस्य तु पूर्वेषां वर्णानां न कश्चिद् दायादः स्यादेते [सहोढदत्तक्रीतस्वयमुपागतापविद्धशूद्रापुत्राः] तस्य भागं हरेयुः ।

If a man has no heirs of the preceding kinds, his property shall be taken by these [the Son Obtained with the Bride, the Adopted son, the Bought son, the Self-offered son, the Cast-off son and the Shūdra-born son.]—(*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 549.]

NOTES

'*Preceding kinds,*'—*i.e.*, the Legitimate and the other five.—(*Vivādaratnākara*, p. 549.)

198. मनु 9. 141.] उपपन्नो गुणैः सर्वैः पुत्रो यस्य तु दत्रिमः ।
स हरेतैव तद् रिक्थं सम्प्राप्तोऽप्यन्यगोत्रतः ॥

If one has an Adopted Son endowed with all good qualities, he shall inherit his property, even though he may have come from another *gotra.*—(*Manu*, 9. 141.) [Quoted in *Vivādaratnākara*, pp. 567-568; *Smṛtichandrikā*, p. 631; *Vīramitrodaya*, p. 616.]

Notes

Under Manu 9. 185, sons in general have been declared to be 'entitled to inheritance'; this implies that the Adopted Son is to inherit the father's property, in the absence of the Legitimate Son. The present text therefore is meant to indicate that he is so entitled, *even when the Legitimate Son is there*. The only question that remains is—what, under the circumstances, shall be the share of the Adopted Son?—Some people hold that, since nothing particular has been laid down, the share shall be equal to that of the Legitimate Son.—This, however, is not right. If shares had been meant to be equal, this would have been clearly stated, as it has been done in the case of the Appointed Daughter. Hence it follows that, like the Soil-born son, the Adopted son shall receive the sixth or fifth part of a share (*Manu*, 9. 164.)—This also is open to objection.—Our revered teacher has explained as follows:—The idea provided by the present verse is that the share of the Adopted Son should be understood to be less than that of the Soil-born son.—(*Medhātithi.*)

'*Datrimaḥ*,'—one given away by his parents;—if such a son is possessed of all the qualities of a son, then, if he belongs to a different *gotra* from the father, he receives a share in the father's property; if he belongs to the same *gotra*, he receives the whole of that property. From this it follows that even a *subsidiary* son, if possessed of very superior qualifications, is entitled to the same inheritance as the *primary* son.—(*Sarvajñanārāyaṇa.*)

That all the twelve kinds of sons are entitled to inheritance has been declared by Manu under 9. 185; again under 9. 165 he declares that it is only in the absence of the Legitimate and the Soil-born sons that the other ten, Adopted and the rest, are to inherit the property. The present text therefore should be taken as declaring that, even when the Legitimate son is there, the Adopted son, if possessed of all good qualities, inherits the father's property.—The meaning is as follows:—If the Adopted son of a man is equipped with all such excellent qualities as learning and the like,—then, though he comes from a different *gotra*, yet he should receive a share in the father's property, even when the Legitimate Son is there. Inasmuch as in the text '*eka evaurasaḥ putraḥ pitṛyasya vasunaḥ prabhuḥ*,' Manu has declared the Legitimate son to be superior to all kinds of sons, the Adopted son cannot receive a share equal to that of the Legitimate son; he can receive only 'the sixth part of a share' which has been assigned to the Soil-born son.—Govindarāja has held this text to mean that in the absence of the Legitimate and the Soil-born sons, the entire property of the father is to go to the Adopted son if he is possessed of superior qualifications. This, however, is not right; as it would be very iniquitous for the qualified Adopted son to take the entire property while the Appointed and other sons get nothing.—(*Kullūka.*)

Reiterating the title of all the sons to inherit the father's property, this text lays down a special rule regarding the Adopted son.—The particle '*api*' implies that whether the Adopted son belongs to the same *gotra* as the father or to a different *gotra*,—if he is endowed with such excellent qualities as learning, humility, faith and the like,—he shall receive the father's property, if the Legitimate and the Soil-born sons are not there.—(*Rāghavānanda.*)

This lays down the heritage of the Adopted son.—(*Nandana.*)

'*Qualities*,'—such as caste, learning and character. The title to inheritance being implied by the fact of his being a 'son,' what the text means is that even though a Legitimate son be born after the adoption, the Adopted son, if duly qualified, shall still be entitled to a share in the property; if not qualified, he shall be entitled to bare subsistence.—(*Vivādaratnākara*, p. 568.)

The particle '*api*' implies that what is here asserted applies also to the case of the Adopted son who comes of the same *gotra* as the adoptive father.—The clause '*sa harētaiva taḍ riktham*' has been explained by Devasvāmin to mean that 'he takes the entire property as also the *gotra* of the father.' From this it should be understood that the very act of being adopted as a 'son' brings about, in that son, the ownership over the adoptive father's property, as also the character of 'belonging to the same *gotra* as that father.'—(*Smṛtichandrikā*, p. 671.)

The particle '*api*' has the sense of '*kimuta*,' the meaning being—'when the son adopted out of another *gotra* receives the property, how much more so would one adopted out of one's own *gotra* do?'—(*Vīramitrodaya*, p. 616.)

199. मनु 9. 142.] गोत्ररिक्थे जनयितुर्न हरेद् दत्त्रिमः क्वचित् [*v.l.*, सुतः] ।
गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा ॥

The Adopted Son shall not take the *gotra* or the property of his progenitor; the cake follows the *gotra* and the property; for him therefore who gives away his son, the funeral offerings cease.—(*Manu*, 9. 142.) [Quoted in *Aparārka*, p. 737; *Mitākṣarā*, p. 704; *Vivādaratnākara*, p. 568; *Smṛtichandrikā*, p. 671; *Parāsharamādhava*, p. 351; *Vīramitrodaya*, p. 616.]

NOTES

It is only right that the Adopted Son should have a share in his adoptive father's property; since he does not inherit either the *gotra* or the property of his progenitor; and this for the simple reason that he has gone out of the latter's family.—Inasmuch as he does not inherit the *gotra* or the property of the progenitor, he does not offer cakes to him; since '*the cake follows the gotra and the property*,' *i.e.*, a son offers the funeral cakes to that person whose *gotra* and property he inherits.—'*Ceases*,' drops away from him.—'*Svadhā*,'—this syllable stands for that which makes the utterance of the syllable '*Svadhā*' possible, *i.e.*, the *Shrāddha* and other offerings. When a man gives away his son to another man, these offerings cease for him, *i.e.*, they should not be offered to him.—This law applies also to the 'appointed' and other kinds of sons—such as 'the son got with the wife,' 'the cast-off son,' and the *Dvyāmuṣyāyaṇa*.—Others construe '*na harēt*' as implying the causal form '*na hārayēt*,' 'should not deprive'; which means that the Adopted Son should benefit both his fathers.—But the fact of the matter is that the verse opens with the *relinquishing of privileges*; so that, consistently with that, the

latter half also should mean that 'no cake shall be offered'; *i.e.*, the father also shall relinquish the privilege of receiving the offerings.—(*Medhātithi.*)

What is declared here is that the Adopted Son has no connection with the property of his progenitor.—For the reasons stated here, the Adopted Son is not a '*Dvyāmuṣyāyaṇa*,' specially as he takes the *gotra* of his *adoptive* father; only the 'soil-born son' and the 'son of the appointed daughter' are '*Dvyāmuṣyāyaṇa*,' since these have two 'fathers.'—The meaning of the second line is that there is cake-offering only when there is *sameness of gotra* and *inheriting of property*; when a man gives away his son, the *Shrāddha* offerings as done by that son cease for him.—(*Sarvajñanārāyaṇa.*)

The Adopted Son shall never take either the *gotra* or the *property* belonging to his progenitor; and a man offers cakes to only that person whose *gotra* and property he has taken; for this reason when a man gives away his son, the *Shrāddha* and other offerings made by that son are lost to him.—(*Kullūka.*)

This verse answers the question as to whether or not the adopted son has any connection with the *gotra* and property of his progenitor.—The answer is that he does not take them, and for that same reason, the cake offered by him does not reach his progenitor. The reason for this lies in the fact that *the offering of the cake* is contingent upon *the taking of gotra and property*;—when a man gives away his son, '*the funeral offerings cease for him.*'—Govinda has expressed the view that the Adopted Son is entitled to inherit the property of his *adoptive* father only when the latter has no 'legitimate' or 'soil-born' son. But in reality, even when these latter are there the Adopted Son is entitled to the property; otherwise there would be no point in the declaration made by Manu in the preceding verse (9. 141); on which Medhātithi has rightly remarked that the verse serves the purpose of asserting that the Adopted Son is entitled to the property also when the Legitimate Son is there.—(*Rāghavānanda.*)

The Adopted Son should not '*take*'—accept—the *gotra* or the property of his progenitor; he should take the *gotra* and the property of the person to whom he has been give away.—The second half gives the reason for what is asserted in the first half. That person alone offers the cake who takes the *gotra* or the property, no one else; consequently when a man gives away his son, the offering of cakes ceases for him.—(*Nandana.*)

The sense of these two verses (141 and 142) is that the Adopted Son is to take the *gotra* and the *property* of both his fathers—the progenitor as well as the adopter.—(*Rāmachandra.*)

The Adopted Son shall not take either the *gotra* or the property of his former father; nor shall he offer the cake to him; he shall take the *gotra* and property of, and offer the cake to, his second (adoptive) father.—The term '*piṇḍa*,' 'cake,' here stands for all the after-death rites.—(*Aparārka*, p. 787.)

The term '*datrimaḥ*,' 'adopted son,' here stands for all *secondary sons*.—(*Mitākṣarā*, p. 705.)—[On this the *Bālambhaṭṭī* has the following note:—The Adopted Son is not affected by the 'impurity' due to the death of his progenitor; it is only *marriage* that has to be avoided in the progenitor's *gotra*.—This text clearly indicates that it is permissible for a man to

adopt a son belonging to a *gotra* different from his own.—'*Piṇḍa*' stands for the entire *Shrāddha* ..... The Adopted Son is not entitled to offer the *Shrāddha* to his progenitor ..... As a matter of fact, the term '*piṇḍa*' stands here for the *Sapiṇḍa*-relationship. It is for this reason that among all cultured people the recognised practice is that whatever rites are performed for an Adopted Son, they are all done by cultured people in accordance with the *gotra* of his *adoptive* father,—and on his death, the 'impurity' is observed by the *Sapiṇḍas* of his *adoptive* father. It is for this same reason that learned men have declared that the *Sapiṇḍa-relationship* also ceases between the Adopted Son and his progenitor.—All this, however, applies to cases where the progenitor has other sons; if, after having given away the son for being adopted by another man, the progenitor of the son happens to be without other sons,—in this case this same son shall be entitled to offer the *Shrāddha* to, and inherit the property of, the progenitor also; because this case would be analogous to that of the 'soil-born' son whom Yājñavalkya(2. 127) has declared to be the "heir" of both the fathers; and also because of the declaration by Shatātapa to the effect that—'the Adopted Son shall perform, for his progenitor, the rites on the day of his death, as also the *Shrāddhas* at Gayā, *in the absence of other sons.*'—This also refers to cases where the progenitor has lost his other sons after having given away the son to be adopted; because if he had no other sons *at the time of giving away that son,* then he could not give away that son; as the giving away of an *only son* has been forbidden.—p. 705.]

'*Gotra,*' relationship to a *Ṛṣi*, indicated by such names as '*Kāshyapa*' and the like.—As a general rule, the offering of cakes follows in the wake of the *gotra* and the property, hence the offering ceases.—'*Svadhā*' stands for the *Shrāddha* and other offerings.—(*Vivādaratnākara,* p. 568.)

In reference to the progenitor, the 'son-ship' of [the Adopted Son ceases by the former's act of giving him away; and that deprives the said son of any claims that he had over the property of that progenitor, as also of the *gotra* of the progenitor.—(*Smṛtichandrikā,* p. 671.)

The Adopted and the other sons are not entitled to the property of the progenitor.—'*Adopted son*' stands for all *secondary sons.*—(*Parāshara-mādhava,* p. 352.)

The cake to which the man giving away his son was entitled drops away from him.—'*Svadhā*' stands for what is done for the satisfaction of the father; and qualifies '*piṇḍa.*'—(*Viramitrodaya,* p. 617.)

200. वासिष्ठ] तस्मिंश्चेत् प्रतिगृहीते औरस उत्पद्यते स चतुर्थभाग-भागी स्यात् [*v.l.*, यदि स्यात्] । यदि नाभ्युदयिकेषु प्रयुक्तं स्यात् ।

If after the taking of a son, a Legitimate Son is born, the former would be entitled to the fourth of a share [*v. l.*, if the property is a large one]; only if the property has

not been employed in auspicious acts.—(*Vasiṣṭha.*) [Quoted in *Aparārka*, p. 739; *Mitākṣarā*, p. 700; *Vivādaratnākara*, p. 544; *Vivādachandra*, 24. 1—6; *Vivādachintāmaṇi*, p. 234; *Vibhāgasāra*, 15. 1. 1.]

Notes

This refers to cases where the Legitimate Son is born after a son has been adopted.—(*Aparārka*, p. 739.)

Even when the Legitimate Son is there, the other sons are entitled to the fourth part of a share.—The 'adopted son' mentioned here is meant to include the Bought, the Appointed and other sons also; because all these are 'made' one's 'son' in the same way as the Adopted Son.—(*Mitākṣarā*, pp. 699-700.)

'*A son*'—other than the 'legitimate.'—'*Saḥ*,' the son that had been taken.—'*Yadi syāt*' (*v.l.*, for '*syāt*'),—if the property is a large one; the words '*prabhūtam dhanam*' being supplied.—'*Yadi nābhyudayikeṣu*'—if the property has not been employed in the performance of sacrifices and others rites.—(*Vivādaratnākara*, p. 544.)

'*Saḥ*,'—the son that has been taken.—'*Yadi syāt*,' if the property is a large one; the words '*prabhūtam dhanam*' being supplied.—If the property is not employed by the Legitimate Son in the performance of sacrifices.

The 'fourth part' assigned here to the other sons is in reference to cases where they are devoid of good qualities and belong to the same caste as the father.—(*Vivādachintāmaṇi*, p. 234.)

After '*a son*,'—any one of the 'substitutes' for a son—has been taken, if a Legitimate Son happen to be born, the former would be entitled to the fourth part of a share; if the property has not been used by the Legitimate Son in the performance of sacrifices.—'*Dhanam*' has to be supplied before '*prayuktam*.'—(*Vivādachandra*, 24. 2—6.)

If the wealth were not employed—by the Legitimate Son—in '*ābhyudayikas*,' *i.e.*, in sacrificial performances. In all these texts Manu and others have declared that even when other kinds of sons are there, it is the Legitimate Son that is entitled to inherit the entire property; while in other texts the other sons are declared to be entitled to receive shares. There is no inconsistency between these two sets of texts; as the difference of treatment is based upon the qualifications of the Legitimate Son. Similarly, wherever we find differences in the allotment of shares to the several kinds of sons, the difference is to be treated as due to the difference in the qualifications of the sons concerned.—(*Vibhāgasāra*, 15. 1-2.)

201. कात्यायन] उत्पन्ने त्वौरसे पुत्रे तृतीयांशहराः [*v.l.*, चतुर्थांशहराः] स्मृताः ।
सवर्णा असवर्णास्तु ग्रासाच्छादनभागिनः ॥

On the birth of the Legitimate Son, they (the other sons) are declared to be entitled to the *third* [*v.l.*, *fourth*] of a share, if they belong to the same caste as the father; if they do not

belong to the same caste,[1] they are entitled to receive only food and clothing.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 733; *Mitākṣarā*, p. 700; *Vivādaratnākara*, p. 544; *Vivādachandra*, 24. 1—4; *Vivādachintāmaṇi*, p. 234; *Dvaitaparishiṣṭa*, p. 38; *Madanapārijāta*, p. 654; *Dāyabhāga*, p. 148; *Vīramitrodaya*, p. 615; *Vibhāgasāra*, 14. 2—9.]

NOTES

Thus then, the rule is that if no 'legitimate' son is born, the 'soil-born' son receives the entire property of both his fathers; but if a 'legitimate' son is born, he receives only a fourth share in the property of their father.—(*Aparārka*, p. 733.)

'*Savarṇāḥ*—those belonging to the same caste as the father,' *i.e.*, the Adopted Son, the Soil-born, and the rest, are to receive 'the fourth of a share'; the '*Asavarṇāḥ*,' 'those belonging to different castes,'—*i.e.*, the Maiden-born, the Secretly-born, the one Obtained with the Bride and the Son of the Remarried Woman,—do not receive 'the fourth of a share'; they are entitled to only food and clothing. [The *Bālambhaṭṭī* explains—'*Asavarṇāḥ*' (not belonging to the same caste) as 'the deprecated kinds of sons.']—(*Mitākṣarā*, p. 700.)

On the birth of the 'legitimate' son, the Adopted and other sons, belonging to the same caste as the father, receive 'the third of a share.'—In Vasiṣṭha's text—'*Tasmiṁshchēt pratigṛhītē*, etc.,' the Adopted Son has been assigned 'the *fourth* of a share,' while in the present text, he is assigned 'the *third* of a share';—this discrepancy is to be reconciled as being due to the difference in the qualifications of the son concerned; if he is possessed of superior qualifications, he receives the 'third,' while if not possessed of superior qualifications, he receives only the 'fourth.'—From this passage it follows that the declaration of Manu to the effect that 'for the other sons, mere subsistence shall be provided' is meant for only those sons who do not belong to the same caste as the father.—(*Vivādaratnākara*, p. 545.)

On the birth of the 'legitimate' son, the Adopted and other sons, if belonging to the same caste as the father, receive the 'third of a share'; those belonging to different castes are only to be supported.—(*Vivādachandra*, 24. 1—5.)

This title to the 'third of a share' belongs to the 'soil-born' son; as has been declared in the *Brahmapurāṇa* text—'*Samagradhanabhoktā*, etc.'—Others hold that it is for such sons as are possessed of very superior qualifications.—(*Vivādachintāmaṇi*, p. 234.)

Some people have declared that the conclusion deduced from a due examination of this text is that, if the 'legitimate' son is there, the 'appointed' and other sons are to receive the 'third of a share.' But this is not right; because if we take this text along with the *Brahmapurāṇa* text, we find that it is the 'soil-born' son alone who is entitled to the 'third of a share.'—The qualification '*Savarṇāḥ*,' 'those who belong to the same caste as the father' also pertains to the 'Soil-born' son; the plural number being used in view of the plurality of 'soil-born' sons.—(*Dvaitaparishiṣṭa*, p. 38.)

'*Savarṇāḥ*,'—'those who belong to the same caste as the father,'—*i.e.*, the Soil-born, the Adopted, the Bought, the Appointed, the Self-offered and the Cast-off.—'*Asavarṇāh*.'—'those not belonging to the same caste,'—*i.e.*, the Maiden-born, the Secretly-born, the one Obtained with the Bride, and the Son of the Remarried Woman.—(*Madanapārijāta*, p. 654.)

The term '*asavarṇa*,' 'not of the same caste,' means one belonging to a *lower* caste.—(*Dāyabhāga*, p. 148.)

'*Savarṇāḥ*'—*i.e.*, the Soil-born, the Adopted and the rest; these are entitled to the 'fourth of a share,' if the Legitimate Son is there.—'*Asavarṇāḥ*'—*i.e.*, the Maiden-born, the Secretly-born, the one Obtained with the Bride, and the Son of the Remarried Woman; these latter are *not* entitled to the 'fourth of a share'; they receive only food and clothing.—(*Vīramitrodaya*, p. 615.)

The '*third of a share*' is meant for the 'soil-born' son. (*Vibhāgasāra*, 174. 2—9.)

202. मनु 9. 134.] पुत्रिकायां कृतायां तु यदि पुत्रोऽनुजायते ।
समस्तत्र विभागः स्यात् ज्येष्ठता नास्ति हि स्त्रियाः ॥

If a son happen to be born after the daughter has been "appointed," the division must be equal; as there is no seniority for the woman.—(*Manu*, 9. 134.) [Quoted in *Aparārka*, p. 739; *Mitākṣarā*, p. 699; *Vivādaratnākara*, p. 541; *Vivādachandra*, 23. 2—8; *Vivādachintāmaṇi*, p. 284; *Madanapārijāta*, p. 654; *Vīramitrodaya*, p. 614.]

NOTES

See Section II, 45.

'*Equal*,'—*i.e.*, there shall be equal shares with the son thus born.—This precludes the 'preferential share.'—'*There is no seniority*, etc.'—The 'seniority' precluded is only in regard to the share of inheritance, and not in regard to the respectful treatment to be accorded to her.—(*Medhātithi*.)

This verse answers the question as to the permissibility of the 'preferential share' for the son of the Appointed Daughter in the stated case, due to her by reason of her seniority.—'*If a son be born*'—to the Daughter's father.—'*Seniority*,' due to the presence of such qualities as learning and the like—there is none for the Daughter, nor, through her, for her son.—(*Sarvajña-nārāyaṇa*.)

After the daughter has been 'appointed,' if the man who has made the 'appointment' happen to have a son born to him,—then, at the time of partition between these two 'sons,' there shall be equal division; and no 'preferential share' shall be given to the 'Appointed Daughter'; because even though she is 'senior' in age, seniority shall not be taken into account for purposes of the allotting of a 'preferential share.'—(*Kullūka*.)

If a man has a son born to him after he has "appointed" his Daughter, the division shall be equal. The daughter's 'seniority' is denied in the sense that she is to receive no 'preferential share.' As the daughter has no

'seniority,' there can be no corresponding 'seniority' for her son also. —(*Rāghavānanda.*)

'*Anujāyate*'—is born after the 'appointment' of the daughter—'*Woman*'—or to her son.—(*Nandana.*)

In view of the possibility of the notion being entertained that "when the Legitimate Son and the Son of the Appointed Daughter are both present, the property shall go to the Legitimate son,"—Manu has set forth here an exception to the general rule laid down in Yājñavalkya (2. 132).—(*Mitākṣarā*, p. 699.) [The *Bālambhaṭṭī* remarks that when the *Mitākṣarā* says that this is a case of the presence of the Legitimate Son and the '*Pautrikeya*.' the 'Son of the Appointed Daughter,' it has in view the first denotation of the term '*putrikāputra*,' as the 'son born of the Appointed Daughter,'—but when the text speaks of no 'seniority' belonging to the woman, it clearly refers to the second denotation of the term—'the son in the shape of the Appointed Daughter herself.']

'*A son*,'—*i.e.*, a 'Legitimate Son.'—'*Anu*,' *after the appointment* of the Daughter.—'*Woman*,' in the shape of the Appointed Daughter. The '*putrikā*' (Appointed Daughter) has been described by Manu in 9. 127. (*Vivādachandra*, 23. 2—8.)

If the '*putrikāputra*' has been appointed, and then a Legitimate Son is born, the former shall share the property equally with the latter.—(*Vivādachintāmaṇi*, p. 234.)

Here Manu has set aside the notion that under the circumstances stated, so long as the Legitimate Son is there, the 'Son of the Appointed Daughter' shall have no share in the property.—(*Vīramitrodaya*, p. 614.)

203. अर्थशास्त्र II, p. 42.] औरसे तूत्पन्ने सवर्णास्तृतीयांशहराः, असवर्णा ग्रासाच्छादनभागिनः। ब्राह्मणक्षत्रिययोरनन्तरापुत्राः सवर्णाः, एकान्तराः असवर्णाः।

On the brith of the Legitimate Son, the other sons belonging to the same caste as the father receive the third of a share; those not belonging to the same caste are entitled to only food and clothing.—For the Brāhmaṇa and the Kṣattriya, sons born of the wife of the next lower caste are held to be *of the same caste as the father*; those born of the wife of a caste one degree further removed is *not of the same caste*.—(*Arthashāstra* II, p. 42.)

NOTES

The son born to the Brāhmaṇa of the Kṣattriya wife, and that born to the Kṣattriya from the Vaishya wife,—are 'of the same caste as the father';—if the son is born to the Brāhmaṇa of the Vaishya wife,—or to the Kṣattriya of the Shūdra wife,—these are 'not of the same caste as the father.'

204. मनु 9. 136.] अकृता वा कृता वाऽपि यं विन्देत् सदृशात् सुतम् ।
देवल] पौत्री मातामहस्तेन दद्यात् पिण्डं हरेद्धनम् ॥

Either *appointed* or *not appointed*, if a daughter bears a son to a husband of equal status, through that son does the maternal grandfather become endowed with a "son's son"; he shall offer the funeral cake and inherit the property.—(*Manu*, 9. 136.) [Quoted in *Dāyabhāga*, pp. 145, 180; *Vīramitrodaya*, pp. 615, 661; *Mitākṣarā*, p. 770.]

NOTES

See Chapter III, Section 73.

By duly considering what has gone before and what follows next, it is clear that this verse refers to the Appointed Daughter.—It has been said that the son of the *unappointed daughter* is entitled to the property of his maternal grandfather; how much more so is the son of the Appointed Daughter?—This is the idea meant to be expressed here.—The verse cannot be taken as laying down the title of the grandson to the property of the maternal grandfather; for, if such a general principle were recognised, then there would be no need for the institution of the 'appointed daughter' at all.—It may be argued that in view of Yājñavalkya's text (1. 228), and the actual words of the present text, it cannot be denied that the daughter's son in general is to offer cakes to the maternal grandfather and also inherit his property; this has been specially emphasised by Manu (9. 132), where it is declared that 'the *daughter's son* shall inherit the entire property, etc.'—But the fact of the matter is that the text of Yājñavalkya referred to uses the term 'mother's *fathers*' in the *plural*; and so cannot refer to her father only.—As for the mention of '*not appointed*' in the present text itself, we have already explained what the reference to her means here.—For all these reasons, the verse must be taken as referring to the son of the *appointed daughter* only.—(*Medhātithi.*)

'*Not appointed*,'—*i.e.*, not actually declared to be an 'appointed daughter.'—'*Sadṛshāt*,' neither from a superior nor from an inferior. The son of the *appointed* daughter should first offer the cake and take the property in all cases and under all circumstances; while the son of the *unappointed* daughter is to offer the cake and inherit the property only in the absence of the wife and the daughter of the deceased.—(*Sarvajñanārāyaṇa.*)

The phrase '*appointed or not appointed*' mentions the two kinds of 'appointed daughter': the first, 'appointed,' is that girl who is 'appointed' at the time of marriage with the bridegroom's consent, and openly with the words 'the child born of this girl shall be the performer of *Shrāddhas* for me'; and the 'not appointed' daughter is that girl whose 'appointment' is not so open and formal, but it has been done only by means of a mental reservation in the mind of the father, not openly expressed,—according to Gautama who has declared that 'according to some people the appointment of the daughter is made by the intention of the father'; it is for this reason that the marrying of a

brotherless girl has been deprecated.—'*Appointed or not appointed,*' when a daughter obtains a son from a husband of the same caste as herself, that *daughter's son* performs for his grandfather the functions of the son's son, and the grandfather becomes endowed, through him, with a '*son's son*'; and as such this grandson shall offer the cake to him.—Govindarāja, however, has taken the 'not appointed daughter' to be the ordinary daughter and has held the meaning to be that the son of the ordinary daughter, also like the son of the *appointed* daughter, is entitled to inherit the grandfather's property, even in the presence of the grandmother and others.—This is not right; as it is only the *appointed* daughter that has been declared to be equal to the son; so that either the *unappointed* daughter or her son cannot have the same status as the 'appointed daughter' or her son.—(*Kullūka.*)

In asserting the daughter's son's title to inheritance, the author has cited the case of the 'appointed daughter' only by way of illustration.—'*Of equal status,*' from a husband of the same caste.—'*Bindet,*' bears.—Through that son, the grandfather becomes endowed with a 'son's son,'—*i.e.*, in the absence of a son of his own.—(*Rāghavānanda.*)

'*Akṛtā,*' not 'appointed' as a daughter.—This son has to offer the cake to, and inherit the property of, his grandfather, who has no other children.—(*Nandana.*)

This text makes it clear that the son born to the Appointed Daughter is, in relation to the father of that daughter, a 'grandson'; it is the 'appointed daughter' herself that is his son; and her son therefore is his 'son's son.'—(*Dāyabhāga*, pp. 144-145; also *Vīramitrodaya*, pp. 614-615.)

This verse clearly declares the title of the son of the *unappointed* daughter also. In fact, in the *Smṛtis,* the term '*dauhitra*' (daughter's son) is always used in the sense of the son of the *unappointed daughter*; for instance, Baudhāyana has clearly asserted that 'the son born to a daughter after stipulation is called the *Putrikāputrā*, the other is called *Dauhitra*.'—(*Dāyabhāga*, p. 181.)

The meaning is that 'just as in the absence of the son, the son's son inherits the property,—so in the absence of the daughter, the daughter's son inherits it.—This does not refer to 'the son of the appointed daughter.'—(*Vīramitrodaya*, p. 661.)

All this cannot refer to the 'son of the appointed daughter'; as he is equal to the Legitimate Son, and hence he inherits as a regular *son*, not as a *daughter's son.*—(*Mitakṣarā*, p. 769.)

205. मनु 9. 146.] धनं यो बिभृयाद् भ्रातुर्मृतस्य स्त्रियमेव च ।
सोऽपत्यं भ्रातुरुत्पाद्य दद्यात् तस्यैव तद् धनम् ॥

He who keeps the property and the wife of his dead brother shall beget a child for that brother and give his property to that child.—(*Manu*, 9. 146.) [Quoted in *Aparārka*, p. 742; *Mitākṣarā*, p. 732; *Vivādaratnākara*, p. 542; *Parāsharamādhava*, p. 357; *Vīramitrodaya*, pp. 617, 633.]

Notes

This rule refers to the case where the dead brother was one who had separated from the surviving brother, while Manu 9. 145 refers to that where the two brothers lived together.—'*Shall beget a child,*'—*i.e.*, by the mode of 'authorisation.'—'*To that child,*'—not to its mother.—It is in accordance with this principle that women are entitled *to maintenance,* and not to *ownership of property.*—'*His property,*'—*i.e*, the property of the separated brother.—(*Medhātithi.*)

'*Bibhṛyāt,*'—protect, keep.—Having begotten the child, he shall give to him, in the prescribed manner, the property ; he shall not take any share out of it for himself.—(*Sarvajñanārāyaṇa.*)

If a man keeps his dead brother's moveable and immoveable property, handed over to him by the widow who is herself incapable of taking care of it,—and supports also the widow herself,—he shall make over that property to the child that he may beget on her by the mode of 'authorisation,' for his brother.—This refers to cases where the brothers had been separated ; in other cases equal sharing having been laid down in 9. 120.—(*Kullūka.*)

This text lays down the right to inheritance of the child born to a widow under 'authorisation.'—The particle '*cha*' is conjunctive of the 'wife' with the 'property.'—'*That property,*' the property left by his separated brother.—If there is no child, the wife shall be maintained, she will not receive the property.—(*Rāghavānanda.*)

'*Taddhanam,*'—the property of the dead brother.—(*Nandana.*)

If a man keeps his dead brother's wife and property, he shall beget a child on the 'soil' of his brother and give the brother's property to that child.—(*Rāmachandra.*)

The meaning is that the property should go to the child, not to its mother.—(*Aparārka*, p. 742.)

What this means is that even in the case of divided brothers, on the death of one, it is only through her child that the widow comes by her husband's property, not otherwise.—(*Mitākṣarā*, p. 732.)

When a divided brother has died childless, the surviving brother who keeps the dead man's wife and property, shall beget on her a child by the mode of 'authorisation,' and make over the dead brother's property to that child ; he shall not, through greed, take the property for himself.—(*Vivādaratnākara*, p. 548.)

When a divided brother has died, it is only through her child that the widow can have any connection with his property. So also in the case of brothers who have lived jointly.—(*Parāsharamādhava*, p. 357.)

This shows that even with the divided property, the wife can have anything to do only through her child ; so also when there has been no separation.—(*Vīramitrodaya*, p. 633.)

206. याज्ञवल्क्य 2. 127.] अपुत्रेण परक्षेत्रे नियोगोत्पादितः सुतः ।
उभयोरप्यसौ रिक्थी पिण्डदाता च धर्मतः ॥

If a sonless man begets a son on another's soil by "authorisation," that son is the legal heir to the property of, and the offerer of the cake to, both.—(*Yājñavalkya*, 2. 127.) [Quoted in *Madanapārijāta*, p. 655; *Vivādaratnākara*, p. 556.]

NOTES

See II. 161.

If it is argued that there was no need for this rule, since the practice of 'Niyoga' has been forbidden for the Brāhmaṇa,—our answer is that, in that case, it would apply to the Kṣattriya and other castes. In reality, however, '*Niyoga*' has been forbidden, not for the Brāhmaṇa male, but for the Brāhmaṇa female; so that there could be no son born by 'authorisation' for the Brāhmaṇa, from a Brāhmaṇa wife; but there would be nothing to prevent his getting one from the *Kṣattriya* and other wives. Thus there is nothing against this rule being operative in cases where there is no 'legitimate' son.—(*Vishvarūpa.*)

When a sonless man begets, by the mode of 'authorisation' a son, for his sonless brother, on his sister-in-law,—that son is called '*Dvyāmuṣyāyaṇa*' and serves the purposes both of the progenitor and the dead brother; he also inherits the property of both these fathers, and offers the cake to them;—such is the law.—(*Aparārka.*)

'*Aputreṇa*'—by a sonless brother-in-law or some other man;—'*parakṣetrē*,' on another man's wife;—'*niyogotpāditaḥ*,' begotten by 'authorisation' given by the elders;—'*ubhayoḥ*,' of both, the owner of the soil and the owner of the seed;—'*rikthī*,' heir to the property.—The sense of this is that, if the authorised brother-in-law or some other person, who is himself without a son, begets a son on another man's wife, for the benefit of both himself and the woman's husband,—that son is a '*Dvyāmuṣyāyaṇa*,' and legally inherits the property of, and offers the cake to, both his fathers.—In a case, however, where the authorised man has a son of his own and undertakes the begetting of the son only for the benefit of the woman's husband, the son that is born belongs only to that husband and not to the progenitor; so that this son will not necessarily inherit the property of his progenitor, or offer the cake to him. This is what has been declared by Manu (9. 53).—'*Kriyābhyupagamāt, etc.*'; also under 9. 52—'*Phalam tvanabhisandhāya, etc.*'—(*Mitākṣarā.*)

'*Aputreṇa*,'—by a sonless brother-in-law or some other man belonging to a different *gotra*;—*niyogotpāditaḥ*,' begotten by the authority of elders;—such a son inherits the entire property of both the owner of the soil and the owner of the seed, and also offers the cake to both;—'*dharmataḥ*,' under the law.—The particle '*api*' is conjunctive of the two fathers.—(*Vīramitrodaya-Tīka* on Yājñavalkya.)

When the 'owner of the seed,' himself without a son, agrees, at the time of lending his seed,' that 'the child born of this seed shall belong to both of us,' then the son that is born inherits the property of both;—in the absence of such an agreement, the son inherits the property of the 'owner of the soil' only. This is a special rule relating to the '*Dvyāmuṣyāyaṇa*.'—(*Madanapārijāta*, p. 655.)

When the authorised man has a son and has undertaken to beget the child only for the benefit of the 'owner of the soil,' then the son belongs to this latter only, not to the 'owner of the seed.'—(*Vivādaratnākara*, p. 556.)

207. विष्णु 17. 23.] अनेकपितृकाणां तु पितृतोभागकल्पना ।
यस्य यत् पैतृकं रिक्थं स तद् गृह्णीत नेतरत् ॥

[The first line is the same as the second line of *Yājñavalkya*, 2. 120. '*Sāmanyārthasamutthānē, etc.*'; and the second line is the same as the second line of *Manu*, 9. 162, '*Yadyēkarikthinau, etc.*']

Among the sons of several fathers, the shares are determined through the fathers; each shall receive that property which belonged to his father, none other.—(*Viṣṇu*, 17. 23.) [Quoted in *Vivādaratnākara*, p. 543; *Vivādachintāmaṇi*, p. 235; *Smṛtichandrikā*, p. 671; *Vivādachandra*, 24. 1-2; *Vibhāgasāra*, 15. 1—6; *Dāyanirṇaya*, 22. 1—3.]

NOTES

See also the notes under the corresponding texts of Yājñavalkya, 2. 120 (sec. 209 below) and Manu, 9. 162.

'*Anēkapitṛkāṇām*,'—sons born of one woman, from several fathers.—(*Vivādaratnākara*, p. 543.)

This rule refers to cases where two sons are born of the same mother, but from different fathers.—(*Vivādachintāmaṇi*, p. 235.)

In a case where among several brothers, one has a 'legitimate' son, and the others have the 'soil-born' or other sons,—and all these brothers have died while living together with joint property,—if a division is made, among their sons, of the property of their grandfather, the share of each shall be determined in accordance with his being the 'primary' or 'secondary' son of his father.—On the birth of a 'legitimate' son, the other sons get only the fourth of a share.—This same rule holds good also in cases where among the brothers some have died and some are living.—(*Smṛtichandrikā*, pp. 671-672.)

In a case where on a single woman, a 'soil-born' son has been begotten first, and later on a 'legitimate' son is also born,—the 'soil-born' son shall receive the property of the progenitor, and the 'legitimate' son, that of the woman's husband.—(*Vivādachandra*, 24. 1-2.)

If there are two sons born of the same mother, but from different fathers, each of them receives his own father's share.—(*Vibhāgasāra*, 15. 1—6.)

This refers to the case of persons who are born of the same mother, but from different futhers.—(*Dāyanirṇaya*, 22. 1—3.)

208. अर्थशास्त्र II, p. 32.] सोदर्याणामनेकपितृकाणां पितृतो दायविभागः ।

Among uterine brothers, who have more than one father, the division of the inheritance is with reference to their fathers.—(*Arthashāstra* II, p. 32.)

209. याज्ञवल्क्य 2. 120.] अनेकपितृकाणां तु पितृतो भागकल्पना ।

Among coparceners born of several fathers, the shares are determined through their respective fathers.—(*Yājña-valkya*, 2. 120.) [Quoted in *Vivādachandra*, 20. 1 - 6 ; *Madana-pārijāta*, p. 659 ; *Parāsharamādhava*, p. 337 ; *Smṛtitattva* II, p. 196 ; *Vyavahāramayūkha*, p. 100 ; *Vivādaratnākara*, p. 481 ; *Vivādachintāmaṇi*, p. 202 ; *Vibhāgasāra*, 4. 1—5.]

NOTES

There is equal division of the inheritance only among brothers ;—'*anekapitṛkāṇām*,' *i.e.*, among cousins and other coparceners,—the division proceeds on the basis of their respective fathers. That is to say, the brothers having made an equal division among themselves,—when their sons, in their turn, come to make a division, the sons of each of the said brothers shall divide among themselves only that which forms the share of their father. The sense is that the grandsons are entitled to the grandfather's property only through their fathers, not by themselves, like their father.—(*Vishvarūpa*.)

Several brothers, who had lived together with their property undivided, have died ; among them one has left a single son, another, two, and a third several sons.—In this case, the shares that will be assigned to these sons will be through their respective fathers ; that is, the two or many sons of one of the brothers shall share among themselves only that much of the property which would have fallen to the share of their father ; and the property shall not be divided equally among all the cousins.—(*Aparārka*.)

This lays down the rule for dividing the grandfather's property among grandsons.—Though it is true that in the grandfather's property, the grandsons derive their rights from their birth,—just as the sons of that grandfather do,—yet, the division of that property among them shall be through their fathers, and not through themselves. [' *Anekapitṛkāṇām* ' means ' those who have a single grandfather, but several fathers in the shape of the sons of that grand-father,—says the *Bālambhaṭṭī*].—The meaning of this is as follows : In a case where a number of brothers who had been living together have died, leaving sons,—and there is divergence in the numbers of sons left by them, one having left two, another three and the third one, four,—the two sons of one brother will, between themselves, receive the single share that would have been their father's ; the three sons of the second brother would also receive, among themselves, the single share that would have been their father's ; and the four sons of the third brother also would receive, among themselves, the single share that would have been their father's.—The same rule applies also to the case where some sons of the grandfather are alive while others have died leaving their sons ;—the living ' sons ' receiving their own shares, and the sons of the dead sons receiving what would have been their father's share.—(*Mitākṣarā*.)

This lays down the rule for dividing the grandfather's property.—In a case where among the two sons of the grandfather's, one has left one son and the other four sons,—the property shall be divided into two parts ; one part shall

go to the single son of the first son, and the second part shall go to all the four sons of the second son.—The particle '*tu*' denotes that the number of *shares* shall not be the same as the number of *grandsons*.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

In a case where the dead man has left only grandsons and no sons, the shares assigned to the grandsons shall be in accordance with the share of their respective fathers.—(*Vivādachandra*, 20. 1—6.)

'*Anekapitṛkāḥ*'—cousins, the sons of several brothers, born of their wives;—to these, shares in their grandfather's property shall be assigned in accordance with the shares of their respective fathers. That is to say, there were three brothers;—one of them has one son, the second one has two, and the third has three; thus there are *six* cousins; but when they come to divide the grandfather's property among themselves, they shall not divide it into *six* equal parts; in fact they shall divide it into *three* parts as among the three brothers (their fathers); and the son of the first brother shall take the whole of one of those three shares; the two sons of the second brother shall receive, between themselves, the second of those three shares; and the three sons of the third brother shall receive, among themselves, the third share.—In those cases where some of the brothers have died leaving their sons, while some are living,—the division shall be on the same lines, each of the brothers receiving one full share and their nephews shall receive only what would have been their father's share.—(*Madanapārijāta*, pp. 659-660.)

In a case where brothers, living jointly with their father, have died leaving sons,—the first brother leaving two, the second three, and the third four,—though these grandsons have a right in their grandfather's property by virtue of their birth, equally with their father, yet, the two sons of the first get only one part, the three sons of the second one get only one part and the four sons of the third also get only one part of the property.—(*Parāsharamādhava*, p. 387.)

This text implies that the assignment of shares depends upon the relative proximity by birth to the acquirer of the property.—(*Smṛtitattva* II, p. 196.)

In a case where one brother has left one son, another has left two sons, and the third, three sons,—the number of parts into which the property shall be divided by these sons shall be that of their fathers, not their own.—(*Vyavahāramayūkha*, pp. 100-101.)

Among the sons of several brothers—if the number of sons of undivided brothers being equal or unequal,—when the grandfather's property comes to be divided, the sons of one brother shall receive that same share which would have been their father's; and each of the sons shall *not* have a share assigned to him.—(*Vivādaratnākara*, p. 481.)

In a case where a number of brothers have died while living jointly,—and each of them has several sons,—each of whom augments the joint property by agriculture and other operations,—each of these shall not have a separate share; all the sons of one brother shall receive only what their father would have received.—(*Vivādachintāmaṇi*, p. 202.)

The meaning is that when there have been several undivided brothers and they have died leaving different numbers of sons,—and each of these sons has earned wealth,—they will receive only the shares of their respective fathers, not more.—(*Vibhāgasāra*, 4. 1—6.)

210. मनु 9. 120.] कनीयान् [*v.l.*, यवीयान्] ज्येष्ठभार्यायां पुत्रमुत्पादयेद् यदि ।
समस्तत्र विभागः स्यादिति धर्मो व्यवस्थितः ॥

In a case where a younger brother begets a son on the wife of his elder brother,—the division shall be equal; such is the settled law.—(*Manu*, 9. 120.) [Quoted in *Mitākṣarā*, p. 732; *Vivādaratnākara*, p. 542; *Vivādachandra*, 23. 2–10; *Parāsharamādhava*, p. 357; *Vīramitrodaya*, pp. 617, 633.]

NOTES

This verse precludes the idea that the son of the elder brother begotten by the mode of 'authorisation' is entitled to the 'preferential share' that would have been his father's. . . . . '*Equal*,'—*i.e.*, the share of that son shall be the same as that of the uncle (his progenitor).—The son born without 'authorisation' is not entitled to any share.—This text is also indicative of the rule that when the brother is not alive, the division shall be between the surviving brother and his nephew.—(*Medhātithi.*)

'*Equal*,'—*i.e.*, through the father.—He is not to have the preferential share.—The implication of this verse is that in a case where the son is begotten by the *elder* brother on the wife of his younger brother,—the share of this son shall be smaller.—(*Sarvajñanārāyaṇa.*)

In a case where the younger brother, by 'authorisation,' begets a son on the wife of his elder brother,—there shall be equal division between that 'soil-born son' and his uncle; and he will not receive the 'preferential share' like his father.—The author is going to declare later on that a 'soil-born' son begotten *without* 'authorisation' is not entitled to any share.—Though 'equal division' has been declared before, yet the purport of the present text is that the grandson who has lost his father, has the same share as his uncle in the grandfather's property.—(*Kullūka.*)

This is a special rule laid down in connection with the 'soil-born' son.—'*Jyeṣṭhabhāryāyām*,' *i.e.*, on the wife of his elder brother.—(*Rāghavānanda.*)

'*Begets*,'—*i.e.*, on being authorised by the elders.—(*Nandana.*)

Manu, 9. 146—'*Dhanam yo bibhryāt, etc.*'—has declared that in a case where of two separated brothers, if one dies it is only through her son that his widow can have anything to do with his property; the present text says that the same holds good in a case where the brothers had not separated.—(*Mitākṣarā*, p. 732.)

In a case where two brothers have been living together, if the younger brother begets on the wife of his elder brother, who has no son,—a son, by the mode of 'authorisation,'—that son, on the death of his father, receives the same share as his uncle, when they come to divide the property; and he does not receive the preferential share or any other consideration due to the 'seniority' of his father.—(*Vivādaratnākara*, p. 542.)

If the 'authorised' younger brother begets a son on the wife of his sonless elder brother,—while the brothers are living together—that son receives the

same share as his progenitor, and not the 'preferential share' due to the elder brother.—(*Vivādachandra*, 23. 2–10.)

Just as in the case of the separated brothers, so in that of unseparated brothers also, the wife can have anything to do with the property only through her child.—(*Parāsharamādhava*, p. 357.)

This shows that it is only through her child that the mother can have anything to do with the property.—(*Vīramitrodaya*, p. 633.)

211. मनु 9. 164.] षष्ठं तु क्षेत्रजस्यांशं प्रदद्यात् पैतृकाद् धनात् ।
औरसो विभजन् दायं पित्र्यम्पञ्चममेव वा ॥

When the Legitimate Son is dividing the paternal estate, he shall give to the Soil-born son one-sixth or one-fifth part.—(*Manu*, 9. 164.) [Quoted in *Vishvarūpa*, p. 249; *Aparārka*, p. 733; *Mitākṣarā*, p. 701; *Vivādaratnākara*, p. 543; *Vivādachandra*, 24. 1–3; *Parāsharamādhava*, p. 348; *Dāyabhāga*, p. 147; *Vīramitrodaya*, p. 616.]

NOTES

It being possible for men to entertain the notion that like the 'Bought' son, the 'Soil-born' son also is entitled to mere subsistence,—the text lays down that he shall receive a share out of the property; what that share shall be depends upon the man's qualifications.—(*Medhātithi*.)

This lays down the rule for a case where a man has died leaving two wives, one of them 'carrying'; and subsequently that wife gives birth to a son; and the second wife also obtains a son by 'authorisation';—thus there are two sons of the man, the former 'Legitimate' and the latter 'Soil-born.'—The 'soil-born' son shall receive the 'sixth of a share' when he is devoid of all qualifications, and the 'fifth of a share' when he is possessed of superior qualifications.—(*Sarvajñanārāyaṇa*.)

When the 'Legitimate' son is dividing the property that belonged to his father, he shall give to the 'soil-born' son the 'sixth' or 'fifth' of a share, according as he is devoid or possessed of superior qualifications.—(*Kullūka*.)

This text lays down the share of the 'soil-born' son,—which option shall be adopted shall depend upon the presence or absence of superior qualifications.—This rule applies to cases where the 'soil-born' son does not inherit his progenitor's property; in cases where he does inherit that property, he does not receive any share in the father's property; as has been clearly declared in Manu, 9. 162—'*Yadyēkarikthinau syātām, etc.*'—(*Rāghavānanda*.)

Here we have an exception, in regard to the 'soil-born' son, to the general rule that when the 'Legitimate son' is there, the other sons shall receive no share in the property.—The option is in regard to the qualifications of the son.—(*Nandana*.)

When the 'Legitimate' son is dividing the father's property, he shall give to the 'Soil-born' son, either the sixth or the fifth of a share.—(*Rāmachandra.*)

The term '*Kṣetraja,*' 'soil-born,' stands here for the 'Son of the Appointed Daughter.' This is the reason why this son has been spoken of in the text—'*Aurasa-kṣetrajau putrau, etc.,*'—as being 'equal sharers' in the father's property;—and yet in the present text, this same son is spoken of as receiving the 'sixth' or 'fifth' of a share.—What is meant by all this is—(*a*) that in the property of his mother's father (who is also his own 'father'), the 'Son of the Appointed Daughter,' having the same status as the 'Legitimate' son, is entitled to the entire share; and (*b*) out of the property of his progenitor, he receives only the 'sixth' or 'fifth' of a share;—whether it will be the 'sixth' or the 'fifth' will depend upon the wish of the 'Legitimate' son.—(*Vishvarūpa*, p. 249.)

This allotment of the 'sixth' or the 'fifth' of a share refers to the case where the 'soil-born' son is possessed of very few qualifications.—(*Aparārka*, p. 733.)

The 'sixth' part is to be given to the 'soil-born' son when he has *both* the disabilities of being inimical (to the 'Legitimate' son) and of having no qualifications; and the 'fifth' part when he has only one of these disabilities.—(*Mitākṣarā*, p. 702.)

This text answers the following question—"In a case where a man, suffering from what he regards as an incurable disease, has obtained a 'soil-born' son,—but subsequently, having been cured of the disease by proper medication, he has a 'Legitimate' son born to him,—what is the 'soil-born' son to receive? mere 'subsistence'? or a share in the property? If a share—what share?"—Whether he will receive the 'sixth' or the 'fifth' part shall depend upon his possessing or not possessing superior qualifications.—(*Vivāda-ratnākara*, pp. 543-544.)

This refers to a case where there is a 'Legitimate son' at first, and then a 'soil-born' son is born without (?) 'authorisation,' of a man belonging to the same caste,—this 'soil-born' son, if possessed of superior qualifications, shall receive the 'fifth' of a share; and if, without such qualifications, then only the 'sixth' of a share.—(*Vivādachandra*, 24. 1-2.)

The rule regarding the 'soil-born' son is as follows:—(*a*) If he is possessed of very superior qualifications, he will receive the 'fourth' part; (*b*) if he is devoid of qualifications and also inimical (to the 'Legitimate' son), he will receive the 'sixth' part; (*c*) if he is only devoid of qualifications, not inimical,—or if he his 'inimical,' not devoid of qualifications,—he will receive the 'fifth' part.—(*Parāsharamādhava*, p. 348.)

This refers to such sons as belong to castes lower than that of the father, but higher than that of the 'Legitimate' son. They are to receive the 'fifth' or the 'sixth' part according as they are possessed or not possessed of superior qualifications.—The term '*Kṣetraja,*' 'soil-born,' here stands for all the other sons also.—(*Dāyabhāga*, p. 147.)

If he is both 'inimical' and 'devoid of superior qualifications,' he will get the 'sixth' part; if he has only one of these two disabilities, he will receive the 'fifth' part.—These are the shares laid down for the 'soil-born' son when the 'Legitimate' son is there.—(*Vīramitrodaya*, p. 616.)

212. विष्णु] अप्रशस्तास्तु कानीनगूढोत्पन्नसहोढजाः ।
पौनर्भवश्च—नैवैते पिण्डरिक्थांशभागिनः ॥

The Maiden-born Son, the Secretly-born Son, the Son Obtained with the Bride, and the Son of the Remarried Woman, —all these are not commended; and they do not partake of the *Piṇḍa* or a share in the property.—(*Viṣṇu.*) [Quoted in *Mitākṣarā*, p. 701; *Madanapārijāta*, p. 654; *Parāshara-mādhava*, p. 348; *Vīramitrodaya*, p. 615.]

NOTES

All that this means is that these are not entitled to receive such shares as the 'fourth' and the like, if there is a 'legitimate son.' In the absence of a 'legitimate' son, even the 'maiden-born' and the rest are entitled to inherit the entire property; according to Yājñavalkya's text (2. 132).—(*Mitākṣarā*, p. 701; also *Vīramitrodaya*, pp. 615-616.)

[Madanapārijāta (p. 654) quotes with approval the above passage from *Mitākṣarā*.]

This only means to preclude the 'fourth' part for these sons, in cases where the 'legitimate' son is there.—(*Parāsharamādhava*, p. 348.)

213. मनु 9. 191.] द्वौ तु यौ विवदेयातां द्वाभ्यां जातौ स्त्रिया धने ।
तयोर्यद् यस्य पित्र्यं स्यात् स तत् गृह्णीत नेतरः ॥

If two sons born of two men contend for the property in the mother's possession, each shall take, to the exclusion of the other, what belonged to his own father.—(*Manu*, 9. 191.)

NOTES

See II., 171 and 280.

214. मनु 9. 131-132.] A. दौहित्र एव च हरेदपुत्रस्याखिलं धनम् ।
देवल B. दौहित्रो ह्यखिलं रिक्थमपुत्रस्य पितुर्हरेत् [*v.l.*, हरेद्यदि] ।
स एव दद्याद् द्वौ पिण्डौ पित्रे मातामहाय च ॥

(A) The daughter's son alone shall inherit the entire property of the man who has no son.

(B) The daughter's son should inherit the entire property of the sonless father.—He shall also offer two cakes—to the 'father' and to the 'maternal grandfather.'—(*Manu*, 9. 131-132.) [Quoted in *Vivādaratnākara*, p. 560.]

NOTES

(A) '*Dauhitra,*' 'daughter's son,' stands for the 'son of the appointed daughter' in the present sentence only, by virtue of the context.—This 'son of the appointed daughter' is to inherit the entire property of the man who dies without a 'legitimate' son.—(B) Some people, reading '*harēt yadi*' in the second line, in place of '*pitur harēt,*' explain the second verse as a continuation of what has been asserted in the first line; the meaning being —'if the Son of the Appointed Daughter inherits the entire property of the father, he shall offer two cakes, etc., etc.'—This explanation is not right: nor is the amended reading one that has been accepted—In fact, the term 'father' here, in the second line, stands for the *progenitor*; and what the text means is that—if the husband of the appointed daughter has no son from another wife, but has only one, in the person of the *son of the appointed daughter* (who has been declared in the first line as the heir to the entire property of his *mother's father*),—then this same son shall be a *son* to his *progenitor* (his mother's husband), as also to his *maternal grandfather* [*i.e.*, he shall inherit the property of, and offer cakes to, both]; in cases where the progenitor has other sons from his other wives, then his property shall not be inherited by the aforesaid 'son of the appointed daughter'; nor will this son offer the cakes to him;—in the case of the 'maternal grandfather' also, the 'son of the appointed daughter' shall offer the cakes to him only when he inherits his property.—Just as the cakes are offered to the progenitor and the maternal grandfather, so should they be offered also to the progenitor's father (paternal grandfather) and the maternal great-grandfather.—(*Medhātithi.*)

(A) '*Dauhitraḥ*'—*i.e.*, the 'son of the appointed daughter,'—'*Aputrasya,*' *i.e.*, of the maternal grandfather.—(B) The 'son of the appointed daughter' is to receive the entire property, not only of his maternal grandfather, but also of his progenitor, his mother's husband, if the latter is '*sonless,*' *i.e.*, has no other son; because he is born of his seed and is, as such, the nearest 'agnate' to him:—further because the stipulation made at the time of the 'appointment' of the daughter, the words used are '*sa mē putro bhaviṣyati,*' 'the son shall be mine'; which do not mean that he shall be *mine only*, which does not preclude the possibility of his acting as the 'son' for his progenitor also. In the case of his receiving the property of his progenitor also,—just as he offers the annual *Shrāddha* to his maternal grandfather and the *Pārvaṇa-Shrāddha* to the ancestors of this latter, so he would also to his progenitor and his ancestors.—(*Sarvajña-nārayaṇa.*)

(A) Of the sonless maternal grandfather, the entire property shall be taken by the '*dauhitra,*' which term, in the present context, must stand for the 'son of the appointed daughter.'—(B) The '*dauhitra*' here also must be the 'son of the appointed daughter'; in the preceding sentence, he has been declared to be entitled to receive the entire property of the maternal grandfather; in the second line he is declared to be the inheritor of the property of his progenitor; and the third line prescribes his liability to offer the cakes to both. The meaning thus is that the 'son of the appointed daughter'—who is the 'son' of his mother's father—will receive the entire

property of his *progenitor*, if the latter has no other son; and he shall also offer two cakes, one each to his progenitor and his mother's father.—(*Kullūka.*)

(B) '*Aputrasya*,' of his sonless *progenitor*, or sonless *maternal grandfather*.—(*Rāghavānanda.*)

(A) '*The man who has no son*,'—the maternal grandfather who has had no son born to him after the 'appointment' of the daughter;—his property shall be inherited by the '*son* of the appointed daughter,'—not by the Appointed Daughter herself.—(B) Even though another man's 'son of the appointed daughter,' he will receive the property of his progenitor, who has no other son; and he shall offer the cake to his sonless progenitor and sonless maternal grandfather.—(*Nandana.*) (A)—'*Who has no son*,'—who has no 'legitimate' son. (B) The second line is only a reiteration of what has gone in the first line—says the *Prakāsha*.—It is a text providing a reason for what has been asserted in the first line,—says Udayakara in his commentary on Manu.—(*Vivādaratnākara*, p. 560.)—The '*daughter's son*' meant here is the 'son of the appointed daughter.'—(*Ibid.*, p. 561.)

215. बृहस्पति] यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु ।
तथैव तत्सुतोऽपीष्टे मातृमातामहे धने ॥

Just as the Appointed Daughter becomes the owner of her father's property, even when his *Bandhus* are there,—so is her son also the owner of the property of his mother and his mother's father.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 561.]

NOTES

This is what Bṛhaspati says in reference to the 'appointed daughter.'—(*Vivādaratnākara*, p. 561.)

216. देवल] तत्तुल्यः पुत्रिकापुत्रो दायादः सोऽथवा भवेत् ।
स एव दद्यात् पिण्डं तु पित्रे मातामहाय च ॥

Equal to him (the Legitimate Son) is the Son of the Appointed Daughter,—who should be the heir; he would offer the cake to his progenitor and also to his maternal grandfather.—(*Devala.*) [Quoted in *Vivādaratnākara*, p. 561.]

NOTES

This is said in continuation of the 'legitimate son.'—(*Vivādaratnākara* p. 561.)

217. मनु 9. 133.] (A) पौत्रदौहित्रयोर्लोके न विशेषोऽस्ति धर्मतः ।
तयोर्हि मातापितरौ सम्भूतौ तस्य देहतः ॥

देवल 9. 139.] (B) पौत्रदौहित्रयोर्लोके विशेषो नोपपद्यते ।
दौहित्रोऽपि ह्यमुत्रैनं सन्तारयति पौत्रवत् ॥

(A) In this world, between the son's son and the daughter's son, there is no difference in law ; for the father and mother of each of them were both born of his own body. (B) Between the son's son and the daughter's son there can be no difference in the world : since the daughter's son also, like the son's son, saves the man in the next world.—(*Manu*, 9. 133, 139.)

NOTES

(A) This is a declaratory supplement to the statement that 'the daughter's son should inherit the property of the sonless father.' (*Manu*, 9. 132.)—(B) The term 'daughter's son' stands for the 'son of the appointed daughter.'—'*Saves the man, etc.*'—This is purely declaratory.—Between the two '*there is no difference*' ;—in the case of the son's son, it is the mother, while in that of the daughter's son, it is the father, that belongs to another family. Hence the daughter's son also delivers one from the *Put*—hell.—(*Medhātithi.*)

(A) This text has been added with a view to preclude the idea that—"In a case where a Legitimate Son has been born after the *appointment* of the daughter, the *son* being more important than the *daughter*, the son of the former would receive a larger share."—The *Appointed daughter's son* is here set forth as the 'heir,'—and not the Appointed Daughter herself,—because the latter being a *female* would be a little further removed than the male. Thus the meaning is that the Appointed Daughter being equal to the son, that daughter's son and the son's son are also equal.—(B) The daughter's son is as much helpful in conveying the grandfather to the imperishable regions as the son's son.—(*Sarvajñanārāyaṇa.*)

(A) In regard to all religious functions there is no difference between the daughter's son and the son's son : because the mother of one and the father of the other are born of one's own body. This reiterates what has gone before.—(B) The '*daughter's son*,'—*i.e.*, 'the son of the appointed daughter' ;—no difference is possible between the daughter's son and the son's son. This assertion of the equality of the two grandsons is for the purpose of indicating that in a case where the Legitimate Son is born after the daughter has been 'appointed,' these two shall receive equal shares in the property.—(*Kullūka.*)

(A) '*Dharmataḥ*'—according to law. The father and the mother of the two, being born of the same body, they have equal rights.—(B) Just as the son's son offers the cake to the father's father, so does the daughter's son to his mother's father.—(*Rāghavānanda.*)

(A) This is meant to justify the idea that the Son of the Appointed Daughter should offer the cake to his maternal grandfather.—*Dauhitraḥ*,'—the Son of the

Appointed Daughter.—'*Dharmataḥ*,' in reason; this reason is shown in the second line. The father of the 'son's son' and the mother of the 'mother's son' are born of the same person.—(B) Just as the father's welfare is brought about by the *son's son*, so is it also by the *daughter's son*. For this reason it is only reasonable that the latter should inherit his property.—(*Nandana*.)

218. अर्थशास्त्र II, p. 41.] स्वयंजातः पितृबन्धूनां च दायादः।
परजातः संस्कर्तुरेव न बन्धूनाम्।

The son born of one's own father is heir to his father as also to the *Bandhus*; that born of another is heir only to the man that performs his sacraments, not to the *Bandhus*.—(*Arthashāstra* II, p. 41.)

219. याज्ञवल्क्य 2. 133-134.] जातोऽपि दास्यां शूद्रेण कामतोंऽशहरो भवेत्।
मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिनम्।
अभ्रातृको हरेत् सर्वं दुहितॄणां सुतादृते॥

The son born to a Shūdra from a slave-girl shall take a share if the father so wishes.' On the father's death his brothers shall give him half a share. If he has no brothers, he shall take the entire property, except where there are (daughters or) daughters' sons.—(*Yājñavalkya*, 2. 133-134.) [Quoted in *Vivādaratnākara*, p. 537; *Vivādachintāmaṇi*, p. 227; *Madanapārijāta*, p. 659; *Dāyabhāga*, p. 143; *Vibhāgasāra*, 13. 1. 1; *Dāyanirṇaya*, 16. 2-3.]

NOTES

When a man has no brother,—and the dead father has left no daughters or daughters' sons,—he would be entitled to take the entire property.—The mention of the 'daughter's son' as providing an exception implies that of twice-born persons, daughters' sons inherit the property, if there are no sons.—(*Vishvarūpa*).

When '*one who has no brother*'—born of a married wife of his father—and there are no daughters' sons—the said man shall inherit the entire paternal property; if there are daughters' sons, he shall receive only half.—(*Aparārka*.)

If there are no sons born of a married wife, then the son born of the slave-girl shall inherit the entire property; but only if there are no daughters born of married wives, or sons of such daughters;—if these latter are there, the said son shall receive only half of the property.—The special mention of the Shūdra in this context implies that in the case of twice-born persons, sons born of slave-girls are not entitled to either the whole or the half of the property, even when the father wishes it; it is the daughters that receive it; only if he is obedient, he gets his maintenance.—(*Mitākṣarā*.)

The slave's son, if he has no brother born of his father's married wife,—and if there are no daughters born of his father's married wife,—or sons of such daughters,—shall inherit the entire paternal property.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

If there is no son born of a married wife,—nor sons of daughters born of a married wife,—the son born of a slave-girl shall receive the entire property of the father.—(*Vivādaratnākara*, p. 538.)

If a Shūdra has no son born of a married wife, nor a daughter's son, the entire property shall be taken by his son born of an unmarried wife.—(*Vivādachintāmaṇi*, p. 227.)

'*Abhrātṛkaḥ*,'—one having no brother born of a married wife of his father; he shall receive the father's entire property; if there are no daughters born of his father's married wife—or sons of such daughters; if these are there, the son born of the slave-girl shall receive only half of the property. The special mention of the *Shūdra* implies that in the case of twice-born persons, the son born of a slave-girl cannot in any way receive any share in the father's property; food and clothing would be all that he would receive.—(*Madana-pārijāta*, p. 659.)

One who has no brother born of his father's married wife shall receive the entire property, if there are no daughters' sons; if there is a daughter's son, the property shall be divided equally.—(*Dāyabhāga*, p. 143.)

A son born to a Shūdra from an unmarried woman receives a share if the father so wishes it; on the death of the father, he receives a share which is half of what is received by the son of a married wife.—'*Duhitṛṇām sutād ṛte*;'—*i.e.*, if there is no married daughter or daughter's son.—(*Vibhāgasāra*, 13. 1-2.)

This makes the share of the *Shūdra* son equal to that of the son of the *slave-girl*—'*Kāmataḥ*,' *i.e.*, according to the father's wish.—'*Duhitṛṇām*, etc.'—if the daughter's son is there, then the said son is to have the same share as that daughter's son. (*Dāyanirṇaya*, 16. 2. 3.)

Section II [3 (c)]

PARTITION AMONG SONS BELONGING TO DIFFERENT CASTES

220. याज्ञवल्क्य 2. 125.] चतुस्त्रिद्व्येकभागाः स्युः क्रमशो [*v.l.*, चतुस्त्रिद्व्येकभागीना वर्णशो] ब्राह्मणात्मजाः ।
क्षत्रजास्त्रिद्व्येकभागा विड्जास्तु द्व्येकभागिनः ॥
[*v.l.*, वैश्यजो द्व्येकभागिनौ]

The sons of the Brāhmaṇa (from wives of the four castes) shall receive respectively four, three, two and one shares ;—the sons of the Kṣattriya (from wives of the three castes) shall receive respectively three, two and one shares ;--and the sons of the Vaishya (from wives of the two castes) shall receive respectively two and one shares.—(*Yājñavalkya*, p. 125.) [Quoted in *Vivādaratnākara*, p. 529 ; *Madanapārijāta*, p. 657 ; *Parāsharamādhava*, p. 342 ; *Vīramitrodaya*, p. 592 ; *Vyavahāramayūkha*, p. 102.]

NOTES

If a Brāhmaṇa has four sons--one each from his four wives belonging to the four castes, Brāhmaṇa and the rest,- the property shall be divided into ten parts ; four of these shall go to the Brāhmaṇa son, three to the Kṣattriya son, two to the Vaishya son and one to the Shūdra-born son.--Similarly in the case of a Kṣattriya, the property shall be divided into six parts,—of which three parts shall go to his Kṣattriya son, two to his Vaishya son and one to his Shūdra son.--In the case of the Vaishya, the property being divided into three parts, two parts shall be given to his Vaishya son and one to his Shūdra son.—The objection may be raised that there can be no Shūdra-born son to a twice-born man, as marriage with a Shūdra woman has been forbidden for him.—True ; but what the present rule means is that in case, under a misapprehension of the legal texts, a twice-born man does marry a Shūdra girl, the son born of that wife shall receive the share here mentioned.—(*Vishvarūpa*.)

This text lays down the law regarding division among sons belonging to different castes.—Among the sons of a Brāhmaṇa -born of wives belonging to the four castes, Brāhmaṇa, Kṣattriya, Vaishya and Shūdra,—the property of the father should be divided into ten parts, out of which four parts shall be taken by the sons born of the Brāhmaṇa wife,—three parts shall be taken by the sons of the Kṣattriya wife,—two by the sons of the Vaishya wife, and one by those of the Shūdra wife.—Similarly in the case of the Kṣattriya father (who has sons born of wives belonging to the Kṣattriya, Vaishya and Shūdra

wives), the property shall be divided into six parts, out of which three parts shall be taken by the sons of the Kṣattriya wife, two by those of the Vaishya wife and one by those of the Shūdra wife.—The property of the Vaishya father shall be divided into three parts, out of which two shall be taken by the sons of the Vaishya wife and one by those of the Shūdra wife.—As regards the *Shūdra*, it is not possible for him to have sons born of wives of other castes.—(*Aparārka.*)

The text here lays down the law regarding division among sons belonging to different castes.—Under Yājñavalkya (1. 5), it has been declared that 'for the Brāhmaṇa there are four wives possible, for the Kṣattriya, three, for the Vaishya, two, and for the Shūdra, one.' If a Brāhmaṇa has sons of the several castes,—*i.e.*, from wives belonging to all the different castes, these shall receive, *in the order of the castes* [reading '*varṇashaḥ*' for '*kramashaḥ*'], four, three, two and one shares. That is to say, of the sons born of the Brāhmaṇa father and Brāhmaṇa mother, each shall receive four parts; of those born of the Brāhmaṇa father and Kṣattriya mother, each shall receive three parts; of those born of the Brāhmaṇa father and Vaishya mother, each shall receive two parts; and of those born of the Brāhmaṇa father and Shūdra mother, each shall receive one part.—The sons born of the Kṣattriya also receive, *in the order of the castes*, three, two and one parts respectively; that is, of the sons born of the Kṣattriya father and the Kṣattriya mother, each shall receive three parts; of those born of the Kṣattriya father and Vaishya mother, each shall receive two parts; and of those born of the Kṣattriya father and Shūdra mother, each shall receive one part.—The sons of the Vaishya receive, *in the order of the castes*, two and one parts respectively; that is, of the sons born of the Vaishya father and Vaishya mother, each shall receive two parts; of the sons born of the Vaishya father and Shūdra mother, each shall receive one part.—As regards the Shūdra, he can have only one wife, and hence he cannot have sons of different castes; for his sons, therefore, the general law (of equal division) holds.—The shares assigned here should be understood as pertaining to property other than the lands that the Brāhmaṇa father may have obtained by way of religious gifts, to which,—under the text '*Na pratigrahabhūrdēyā*, etc.,'—the non-Brāhmaṇa sons are not entitled; though to lands other than those,—*e.g.*, those obtained by purchase—the Kṣattriya and Vaishya sons are entitled; the *Shūdra* son, however, has been specially precluded from inheriting any landed property—under the text '*Shūdryān dvijātibhirjātó*, etc.'; this latter preclusion also indicates that the Kṣattriya and Vaishya sons are entitled to inherit the landed property acquired by the father, by purchase and other means (except *gifts*).—As for Manu's text (9. 155), which precludes the Shūdra-born son from all inheritance,—that refers to cases where that son has received some loving gifts from the father during his lifetime; where there has been no such gift, the receiving of 'one part' shall not be a contravention of Manu's text.—(*Mitākṣarā.*)

This lays down the rule regarding division among brothers belonging to different castes.—The sons born to a Brāhmaṇa from his four wives belonging to the four castes receive respectively, four, three, two and one parts;—the sons born to the Kṣattriya from the three wives belonging to the Kṣattriya, Vaishya and Shūdra castes receive respectively, three, two and one parts;—

the sons of the Vaishya father born of the two wives of the Vaishya and Shūdra castes, receive respectively, two and one parts ;—all this refers to property other than the lands that may have been received by the father as a religious gift.—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

This rule refers to cases where the Brāhmaṇa has four wives and the Kṣattriya, three.—'*Varṇashaḥ*' [*v.l.*, for '*Kramashaḥ*']—*i.e.*, born to the Brāhmaṇa from each of the four castes.—In cases where the Kṣattriya and Vaishya sons happen to be possessed of superior qualifications, the division shall be as laid down in the Mahābhārata—'*Kṣattriyasyāpi bhārye dve*, etc.' ; but where they have inferior qualifications, their shares shall be as laid down in the present text of Yājñavalkya.—(*Vivādaratnākara*, pp. 529-530.)

'*Varṇashaḥ*,'—in the order of castes.—The sons of a Brāhmaṇa born of his four wives belonging to the Brāhmaṇa, Kṣattriya, Vaishya and Shūdra castes shall receive respectively, four, three, two and one parts. That is, one part being assigned to the Shūdra son, four such parts shall be given to the son of the Brāhmaṇa wife ; this latter's share reduced by a quarter,—*i.e.*, three parts—shall go to the son of the Kṣattriya wife ; half the share of the Brāhmaṇa son,—*i.e.*, two parts—shall go to the son of the Vaishya wife ; and the son of the Shūdra wife shall receive one part.—The sons of a Kṣattriya father, born of his three wives belonging to the Kṣattriya, Vaishya and Shūdra wives, shall receive three, two and one parts respectively. Inasmuch as the share of the Kṣattriya is one part less than the share of the Brāhmaṇa's son born of his Brāhmaṇa wife, the son born to the Kṣattriya of his Kṣattriya wife shall receive three parts ; the son born of his Vaishya wife shall receive two parts ; and the son born of his Shūdra wife shall receive one part.—Among the sons of a Vaishya father, born of his two wives belonging to the Vaishya and Shūdra castes,—inasmuch as the share of the Vaishya is two parts less than that of the Brāhmaṇa's son born of his Brāhmaṇa wife,—that born of his Vaishya wife shall receive two parts, and that born of his Shūdra wife shall receive one part.—The plural number in the case of the Vaishya's sons is in reference to the plurality of his sons, not in reference to the plurality of his wives.—The division among sons equal or unequal in number shall proceed on the basis of the principle here enunciated.—(*Madanapārijāta*, pp. 657-658.)

The sons born to a Brāhmaṇa from his wives belonging to the Brāhmaṇa, Kṣattriya, Vaishya and Shūdra castes—known respectively as '*brāhmaṇa*,' '*mūrdhāvasiktā*,' '*ambaṣṭha*' and '*niṣāda*,'—shall receive four, three, two and one parts respectively.—The sons born to a Kṣattriya of his three wives belonging to the Kṣattriya, Vaishya and Shūdra castes—known as '*Kṣattriya*,' '*māhiṣya*' and '*ugra*'—shall receive three, two and one parts respectively.—The sons born to a Vaishya on his two wives of the Vaishya and Shūdra castes,—known as '*vaishya*' and '*karaṇa*,'—shall receive two and one parts respectively.—(*Parāsharamādhava*, pp. 342-343.)

Yājñavalkya has declared that the Brāhmaṇa may have three wives belonging to other castes ; the Kṣattriya, two ; and the Vaishya, one ; so that along with the wife of his own caste, the Brāhmaṇa may have four wives, the Kṣattriya, three and the Vaishya, two.—The sons born to a Brāhmaṇa from his four wives,—known as the '*mūrdhāvasikta*' and the rest,—receive, 'in the order of the castes' of their mothers, four, three, two and one

parts respectively. That is to say, of the sons born to a Brāhmaṇa from his Brāhmaṇa wife, each shall receive four parts; of those born to him of his Kṣattriya wife, each shall receive three parts; of those born to him of his Vaishya wife, each shall receive two parts; and of those born to him of his Shūdra wife, each shall receive one part.—The term '*varṇashaḥ*,' 'in the order of the castes' (*v.l.*, for the '*kramashaḥ*,' 'respectively') is to be construed with all the clauses. Hence, of the sons born to the Kṣattriya of his Kṣattriya, Vaishya and Shūdra wives, each shall receive three, two and one parts respectively;—of the sons born to the Vaishya of his Vaishya and Shūdra wives, each shall receive two and one parts respectively.—For the Shūdra there being no wives belonging to any other caste, the division among his sons shall be in accordance with the rule laid down in connection with division among sons of the same caste as the father.—(*Vīramitrodaya*, pp. 592-593.)

The sons of a Brāhmaṇa, born of his Brāhmaṇa, Kṣattriya, Vaishya and Shūdra wives;—the sons of a Kṣattriya born of his Kṣattriya, Vaishya and Shūdra wives;—the sons of the Vaishya born of his Vaishya and Shūdra wives.—(*Vyavahāramayūkha*, p. 103.)

221. मनु 9. 152-153.] सर्वं वा रिक्थजातं तु दशधा प्रविभज्यते ।
धर्म्यं विभागं कुर्वीत विधिनाऽनेन धर्मवित् ॥
चतुरोंऽशान् हरेद् विप्रस्त्रीनंशान् क्षत्रियासुतः ।
वैश्यापुत्रो हरेद् द्व्यंशमंशं शूद्रासुतो हरेत् ॥

The man knowing the law shall divide the entire estate into ten parts, and then make an equitable division according to the following rule: The Brāhmaṇa shall take four parts; the son of the Kṣattriya mother, three parts; the son of the Vaishya mother, two parts; and the son of the Shūdra mother shall take one part.—(*Manu*, 9. 152-153.) [Quoted in *Mitākṣarā*, p. 665; *Vivādaratnākara*, p. 528; *Vivādachintāmaṇi*, p. 224; *Vīramitrodaya*, p. 594; *Vibhāgasāra*, 12. 1—9; the second verse in *Dāyanirṇaya*, 20. 1—7.]

NOTES

On the strength of the declaration contained in this text, some people reject the division laid down in Manu 9. 151 (see below).—9. 151, however, refers to cases where there are two or more sons of each caste who are entitled to equal shares; whereas the present text refers to cases where the number of sons of the different castes is not the same.—Though the shares of the Kṣattriya and other sons have been set forth here in an unqualified form, yet in another *Smṛti* we read that (*a*) 'the land acquired from gifts shall not be given to the son of the Kṣattriya mother';—since this specifies the land 'acquired from gifts,' that acquired by purchase and other means do not become excluded.—(*b*) In another *Smṛti* we read—'the son born to a Brāhmaṇa from a Shūdra wife

is not entitled to a share in the landed property,' which precludes the Shūdra from all kinds of land.—All this restriction should be understood to apply to cases where there are other forms of property also; otherwise, the sons in question would be left without any subsistence.—But what I hold is that provision for subsistence has nowhere been precluded. The difference between the two cases is that if the said sons were entitled to regular 'shares,' they would be entitled to sell or give away the property inherited, while of what they get for 'subsistence,' they can take only the usufruct. Provision for the subsistence of such sons has got to be made at the time of the partition of the father's property; for if no provision were made at this time by definitely setting aside some landed property for that purpose, it is just possible that the other sons who have inherited the landed property may squander it away, which would leave the other sons entirely without the means of subsistence.—(*Medhātithi.*)

This refers to cases where there are several sons from all the wives.—In this case there is no 'preferential share.'—When each of the four wives has several sons,—and in varying numbers,—each son of the Kṣattriya wife shall receive what is one-fourth less than the share of the son of the Brāhmaṇa wife; each of the sons of the Vaishya wife shall have one-half, and the son of the Shūdra wife, one-quarter, of the share of the son of the Brāhmaṇa wife.—In a case where only the Brāhmaṇa and the Kṣattriya wives have children, the property shall be divided into *seven* parts—four of which shall go to the Brāhmaṇa son and three to the Kṣattriya son.—In a case where there are sons born only of the three wives of the Brāhmaṇa, Kṣattriya and Vaishya, the property shall be divided into nine parts; where there are sons of the Brāhmaṇa, the Vaishya and the Shūdra wives only, it shall be divided into seven parts; where there are sons of the Brāhmaṇa and the Shūdra wives only, it shall be divided into five parts, and so on.—Similarly in the case of the Kṣattriya having sons of the Kṣattriya, Vaishya and Shūdra wives, they shall receive respectively, three, two and one parts,—the property having been divided into six parts.—(*Sarvajñanārāyaṇa.*)

The entire property—without extracting any 'preferential share' from it—shall be divided into ten parts. . . . The Brāhmaṇa shall receive four parts; the son of the Kṣattriya mother shall take three parts; the son of the Vaishya mother, two parts; and the son of the Shūdra mother, one part.—In a case where there are only sons born of the Brāhmaṇa and Kṣattriya wives, the property shall be divided into seven parts, out of which four parts shall go to the Brāhmaṇa son and three to the son of the Kṣattriya wife. Similarly in cases where there are two or more sons born of the Brāhmaṇa and Vaishya wives and so on.—(*Kullūka.*)

This implies that the alternative laid down in the present text is the principal one (that contained in Manu 9. 151 being the secondary one).—(*Nandana.*)

The meaning is that when a division (on the lines laid down in 151) has been made among the four sons,—if any of these four brothers (belonging to the four different castes) happen to have two or three or more brothers of the same caste as himself, he shall divide his own share equally with these.—(*Rāghavānanda.*)

The division herein set forth proceeds on the basis of no 'preferential share' having been extracted.—No significance is meant to attach to the singular number in '*viprah*,' 'Brāhmaṇa.'—(*Vivādaratnākara*, p. 528.)

Of the two alternative methods laid down by Manu (in 151 and 153), the latter is in agreement with Yājñavalkya. The discrepancy between the two methods is to be explained as being due to the difference in the qualifications of the sons of the Kṣattriya and other wives. If, for instance, the son born to a Brāhmaṇa from his Kṣattriya wife happen to be senior in age and also possessed of superior qualifications, then his share shall be equal to that of the son of the Brāhmaṇa wife, and so on, as declared by Bṛhaspati: '*Viprē ṇa kṣattriyājāto, etc.*'—(*Vīramitrodaya*, p. 594.)

This text lays down the method of partition among the sons born to a Brāhmaṇa from his four wives belonging to the four castes.—(*Dāyanirṇaya*, 20. 1—7.)

222. मनु 9. 149—151.]—(A) ब्राह्मणस्यानुपूर्व्येण चतस्रस्तु यदा स्त्रियः ।
तासां पुत्रेषु जातेषु विभागोऽयं प्रकीर्तितः ॥
कीनाशो गोवृषो यानमलङ्कारश्च वेश्म च ।
विप्रस्यौद्धारिकं देयमेकांशश्च प्रधानतः ॥
(B) त्र्यंशं दायाद्धरेद्विप्रो द्वावंशौ क्षत्रियासुतः ।
वैश्यजोऽध्यर्धमेकांशमंशं शूद्रासुतो हरेत् ॥

If to a Brāhmaṇa there be four wives in due order, for partition among the sons born of these, the rule has been declared to be as follows:—(A) The ploughman, the breeding bull, the conveyance, the ornament and the house shall be given, as the preferential share, to the Brāhmaṇa; as also one principal share.—(B) Out of the inheritance, the Brāhmaṇa shall take three parts; the son of the Kṣattriya wife, two parts; the son of the Vaishya wife, a part and a half; and the son of the Shūdra wife, one part.—(*Manu*, 9. 149—151.) [Quoted in *Vīramitrodaya*, p. 594; *Vivādaratnākara*, pp. 527-528; *Parāsharamādhava*, p. 343.]

NOTES

(A) '*Kīnāsha*'—is the ploughman;—'*conveyance*,'—cart, etc.;—'*ornament*,'—worn by the father;—'*house*,'—the principal apartment. '*One principal share*'—from among the shares into which the property may be divided, the most important shall go to the Brāhmaṇa son.—All this shall be set aside as the 'preferential share' for the 'eldest,' and the rest of the property partitioned.—(B) Though the text has used the singular number throughout, yet the rule here laid down applies also to the case where there are two or more sons of each caste who are entitled to equal shares. For a case where the number

of sons of the different castes is not the same, the rule is set forth under 9. 152-153.—(*Medhātithi.*)

(A) '*Conveyance,*'—any one cart;—'*Viprasya,*' to the Brāhmaṇa son.—'*Principal share*'—equal to one of the 'three parts' spoken of in the next verse.—(B) The property left over after the extracting of the preferential shares shall be divided into seven parts and a half, and then distributed in the manner here set forth. This rule is for cases where from each of the four wives—belonging to the four castes,—there is only one son.—(*Sarvajñanārāyaṇa.*)

(A) If a Brāhmaṇa has four wives of the four castes—the sons born of these shall divide the property in the following manner: (B) The Brāhmaṇa shall take 'three parts' of the property; the son of the Kṣattriya wife shall take two; the son of the Vaishya wife shall take a part and a half, and the son of the Shūdra wife shall take one share.—In a case where there are only two sons—one from the Brāhmaṇa and another from the Kṣattriya wife—the property shall be divided into five parts, out of which three parts shall go to the Brāhmaṇa and two to the son of the Kṣattriya wife; similarly where the Brāhmaṇa and the Vaishya wives have two or more sons, etc.—(*Kullūka.*)

(A) '*Yadi*' implies disapproval of the Shūdra wife.—At the very outset, one, the best, portion of the property is to be given to the son of the Brāhmaṇa wife.—'*House,*' the principal one;—all this applies to cases where these things are there. (B) After the extraction of the 'preferential shares,' the remainder of the property is to be partitioned; and this text lays down the method of that partition.—'*Dāyāt,*'—*i.e.*, out of the partible property.—(*Rāghavānanda.*)

After the preferential share has been given away, the rest is to be divided in the manner herein set forth.—(*Nandana.*)

'*Viprah,*' 'Brāhmaṇa,' *i.e.*, the son of the Brāhmaṇa wife.—(*Rāmachandra.*)

[For notes from *Vīramitrodaya*, see note on Manu, 152-153 Section 221, above.]

'*Kīnāsha,*' ploughman;—'*Conveyance,*' such as the horse; all these shall be given to the son of the Brāhmaṇa wife. Among the three shares assigned (in 151) to the Brāhmaṇa, one shall be made specially '*important*' in value.—The '*breeding bull*' and other things are to be given if they are there.—(*Vivādaratnākāra*, p. 528.)

All this division refers to property other than the lands acquired by gifts.—(*Parāsharamādhava*, p. 343.)

223. मनु 9. 156.] समवर्णासु वा जाताः सर्वे पुत्रा द्विजन्मनाम् ।
उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समम् ॥

All the sons of twice-born men, born of wives of the same caste, shall divide the property equally, after the others have given to the eldest a preferential share.—(*Manu*, 9. 156.)

NOTES

Sec. II, 301 and 310.

224. मनु 9. 155.] ब्राह्मणक्षत्रियविशां शूद्रापुत्रो न रिक्थभाक् ।
यदेवास्य पिता दद्यात् तदेवास्य धनं भवेत् ॥

Of the Brāhmaṇa, the Kṣattriya and the Vaishya, the son born of a Shūdra wife is not an inheritor of property; his property shall consist of what his father may give to him.—(*Manu*, 9. 155.) [Quoted in *Aparārka*, pp. 732, 735; *Smṛtichandrikā*, p. 614; *Mitākṣarā*, p. 670; *Madanapārijāta*, p. 658; *Vivādaratnākara*, p. 535; *Vivādachintāmaṇi*, p. 226; *Parāsharamādhava*, p. 343; *Dāyabhāga*, p. 141; *Vīramitrodaya*, p. 595; *Vyavahāramayūkha*, p. 103.]

NOTES

The son born of the Shūdra wife of the twice-born man is not an 'inheritor of property.'—"Is that so absolutely?"—No; '*whatever his father may give to him*,'—*i.e.*, the 'tenth part' which the father may have allotted to him—that shall be his property, and he obtains nothing more out of his paternal property.—In this connection, it has been declared by *Shaṅkha*.—'The son of the Shūdra wife is not entitled to inheritance; his share consists of what his father gives him; *at the time of partition, however, his brothers may give him a pair of bullocks in addition*.'—Others hold that the text refers to the son of an unmarried Shūdra woman;—their argument being that there is nothing in the text to indicate the mother being a *married wife*; so that what the text means is that for the son born of a woman of the *Shūdra* caste (to a twice-born father), the provision that he may make for his maintenance, or any share that he may have allotted during his lifetime, for his maintenance,—that shall be his property, and his brothers need not give him anything.—In connection with this, Gautama (28. 39) says—'As regards the sons of unmarried wives, they shall, if they are obedient, receive enough for subsistence, in the manner of pupils.'—According to the view of these men, however, it would follow that the sons born of unmarried *Kṣattriya* and *Vaishya* wives are entitled to inheritance; and it is not known to what shares these would be entitled.—(*Medhātithi*.)

This is meant to declare that the son of the Shūdra wife may get even more than the 'tenth part' (ordained in Manu, 9. 154), if his father has given it to him.—'*Not an inheritor of property*'—beyond the 'tenth part.'—'*His property*'—*i.e.*, what his father may have given to him, that alone he shall get beyond the 'tenth part.'—(*Sarvajñanārāyaṇa*.)

The son born to a Brāhmaṇa, or Kṣattriya or Vaishya,—from a Shūdra wife,—does not inherit any property; what his father gives him that alone shall be his property. Here we have a negation of the share assigned to the Shūdra-son in Manu, 9. 154; this, therefore, should be treated as a case of option; to be determined by consideration of the qualifications of the son;—if he is possessed of superior qualifications, he gets a share (as declared in 154); if he has no qualifications, he gets no share (as declared in the present text).—Or the

denial of the 'tenth part' (contained in the present verse) may be taken as referring to the son of an *unmarried* Shūdra wife.—(*Kullūka.*)

In a case where the division is being made by the sons, the son of the *Shūdra* wife, if devoid of qualifications, shall not be entitled to inheritance.—The meaning is that the 'tenth part' shall *not* be given to the son of the Shūdra wife.—(*Nandana.*)

'*Does not inherit property,*'—if he is devoid of qualifications.—(*Rāmachandra.*)

This text precludes the son of the Shūdra wife from inheritance, in case where he has already got some property as a loving gift from his father. If total exclusion were meant, then the texts ordaining shares for such a son would become meaningless.—(*Aparārka*, pp. 732 and 735.)

The meaning is that in a case where there are two sons—one born of a *Shūdra* wife and another of a non-*Shūdra* wife,—the son born of an *unmarried* Shūdra wife is not entitled to inheritance, and the whole property goes to the *non-Shūdra* son.—(*Smṛtichandrikā*, p. 614.)

This refers to cases where the son of the Shūdra wife has received some property already through his father's favour; in cases where no such property has been given, the allotting of one share to him would not be repugnant to the present text. [It is not right to take this text as referring to the son of the *unmarried* Shūdra wife—says the *Bālambhaṭṭī*.]—(*Mitākṣarā*, pp. 670-671.)

What this means is that in a case where the father, during his lifetime, has already given something to the son born of his Shūdra wife,—his brothers need not give any share to him at the time of partition; in cases where the father has not given anything, he does receive a share.—(*Madanapārijāta*, pp. 658-659.)

According to *Lakṣmīdhara*, in a case where the father, being pleased with the son of his Shūdra wife, wishes to give him some property, he should not give him anything more than the 'tenth part,'—such is the meaning of verse 154; according to this view the statement that 'the son of the Shūdra wife shall not inherit property' would mean that 'he is not entitled to anything that has not been given to him by the father.'—According to *Halāyudha* and *Pārijāta*, on the other hand, the former text (154) refers to such son of the *married* Shūdra wife as is devoid of qualifications, and the present text refers to such son of the *unmarried* wife as is devoid of qualifications, and precludes him from all shares in the property.—(*Vivādaratnākara*, p. 536.)

'*Does not inherit property*';—the meaning is that even though the father may be kind to him, he cannot receive more than the 'tenth part,'—says the *Kalpataru*;—the meaning is that the son of even a married *Shūdra* wife, if entirely devoid of qualifications, is not entitled to a share in the property of the father,—says the *Pārijāta.*—(*Vivādachintāmaṇi*, p. 226.)

There is no discrepancy between this and Manu, 154, as the present text refers to cases where the son in question has some property given to him through his father's love for him.—(*Parāsharamādhava*, p. 343.)

What is precluded here is the son inheriting the father's property; and this should be taken as referring to cases where the son has, through his father's kindness, already received the 'tenth part.'—(*Dāyabhāga*, p. 141.)

This refers to cases where the son has already got some property given to him by the father,—so say the *Southerners.*—It refers to such son of the *unmarried* Shūdra woman as is devoid of qualifications,—so say the *Easterners.* —This however is not right; as it is not proper to introduce any conditions,—such as the presence or absence of qualifications—apart from what is directly mentioned in the second line of the text; and also because the question of the share of the son of the *unmarried* Shūdra wife is going to be dealt with under the treatment of 'Slaves.' Hence the former view is the right one.—(*Vīramitrodaya*, p. 596.)

This means that the son of an *unmarried* Shūdra wife does not receive any share, even in the moveable property.—(*Vyavahāramayūkha*, p. 103.)

225. मनु 9. 157.] शूद्रस्य तु सवर्णैव नान्या भार्योपदिश्यते ।
तस्यां जाताः समांशाः स्युर्यदि पुत्रशतं भवेत् ॥

For the Shūdra has been ordained a wife of his caste only and no other; and all the sons born of her shall be entitled to get equal shares, even if there be a hundred sons.—(*Manu*, 9. 157.)

NOTES

See II, 301 and 310.

226. बौधायन] सवर्णापुत्रानन्तरापुत्रयोरनन्तरापुत्रश्चेद्गुणवान् स ज्ये-
ष्ठांशं हरेत् । गुणवानशेषाणां भर्ता भवति ।

If there are two sons,—one born of the wife of the same caste as the father and the other born of the wife of the next lower caste,—and the latter is possessed of superior qualifications, he receives the preferential share ordained for the *eldest.* It is the brother possessed of superior qualifications who becomes the supporter of all.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 532.]

227. नारद] वर्णापरेष्वंशहानिरूढाजातेष्वनुक्रमात् ।

In the case of sons of lower castes, born of married wives, there is a gradual diminution of shares.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 528.]

NOTES

'*Lower castes,*'—the Kṣattriya and the rest,—for the Brāhmaṇa,—'*ūḍhā,*'—married.—'*Diminution of shares,*'—*i.e.*, the Kṣattriya son gets

only *three* shares and so forth.—For '*varṇāvareṣu*,' another reading is '*varṇāntareṣu*'; the meaning remains the same.—(*Vivādaratnākara*, p. 528.)

228. वसिष्ठ] यदि ब्राह्मणस्य ब्राह्मणक्षत्रियवैश्याः पुत्राः स्युः त्र्यंशं ब्राह्मण्याः पुत्रो हरेत्, द्व्यंशं राजन्यायाः पुत्रः, सममितरे विभजेरन् ।

If a Brāhmaṇa has Brāhmaṇa, Kṣattriya and Vaishya sons,—the son of the Brāhmaṇa wife shall take three shares and the son of the Kṣattriya wife, two shares; the others shall divide equally.—(*Vashiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 532.]

NOTES

'*Others*,'—*i.e.*, the sons of the Vaishya wife.—The unequal divisions spoken of in Vashiṣṭha and Viṣṇu are to be reconciled by being taken as referring to cases of sons possessing or not possessing superior qualifications.—(*Vivādaratnākara*, p. 532.)

229. बृहस्पति 25. 29.] विप्रेण क्षत्रियाजातो जन्मज्येष्ठो गुणान्वितः ।
भवेत् समांशः, क्षत्रेण [*v.l.*, विप्रेण] वैश्याजातस्तथैव च ॥

The son born to a Brāhmaṇa of a Kṣattriya wife,—if he happens to be the eldest in age and endowed with good qualities,—shall receive a share (equal to that of the son born of the Brāhmaṇa wife); similarly the son born to the Kṣattriya (or the Brāhmaṇa) from a Vaishya wife (shall receive the same share as the son born of the Kṣattriya wife).—(*Bṛhaspati*, 25. 29.) [Quoted in *Vivādaratnākara*, p. 533; *Dāyabhāga*, p. 138; *Vīramitrodaya*, p. 594.]

NOTES

The meaning is that the son born of a Brāhmaṇa father and Kṣattriya mother,—if he happens to be the eldest son, by birth, and also possessed of excellent qualities,—shall be given the same share as the Brāhmaṇa son; and similarly the Vaishya son born to the Kṣattriya or the Brāhmaṇa,—if he happens to be the eldest and possessed of good qualities,—shall receive the same share as the Kṣattriya son.—(*Dāyabhāga*, *p.* 138; also *Vīramitrodaya*, p. 594.)

230. शङ्ख] ब्राह्मणी क्षत्रिया वैश्या ब्राह्मणस्य प्रकीर्तिता ।
क्षत्रिया चैव वैश्या च क्षत्रियस्य प्रकीर्तिता ।
वैश्यैव भार्या वैश्यस्य शूद्रा शूद्रस्य कीर्तिता ।

For the Brāhmaṇa, the Brāhmaṇa, the Kṣattriya and the Vaishya wives have been permitted ; for the Kṣattriya, the Kṣattriya and the Vaishya wives; the Vaishya can have only the Vaishya wife, and the Shūdra only the Shūdra wife.—(*Shaṅkha.*) [Quoted in *Dāyabhāga*, p. 136.]

NOTES

Here Shaṅkha has declared that the twice-born can have wives only of the twice-born castes, not of the Shūdra caste. If a twice-born person begets children on a Shūdra woman not taken by him as his *wife*, he does not incur much sin or a serious expiation. –(*Dāyabhāga*, p. 136.)

231. गौतम 28. 35—38.| ब्राह्मणस्य राजन्यापुत्रो गुणसम्पन्नो ज्येष्ठस्तुल्यभाक् ज्येष्ठांशहीनमन्यत् । तथा च राजन्यावैश्यापुत्रसमवाये । क्षत्रियाच्च ।

(A) The son born to a Brāhmaṇa from a Kṣattriya wife,—if he is endowed with good qualities, and is the eldest—receives an equal share ;—also other things, without the 'preferential share' ordained for the eldest.—(B) Similarly when there are sons born of the Kṣattriya wife and the Vaishya wife (to the Brāhmaṇa).—(C) Also to the Kṣattriya.—(*Gautama*, 28. 35—38.) [Quoted in *Vivādaratnākara*, p. 533.]

NOTES

(A) '*Anyat*,'—'other things,' the cow and such things.—He is not to receive any 'preferential share,' which would have gone to the Brāhmaṇa son, if he had been the eldest.—(B) Just as the son of the Kṣattriya wife, if he is the eldest and highly qualified, shares equally with the son of the Brāhmaṇa wife, in the same manner if there is no son born of the Brāhmaṇa wife, and there are sons born of the Kṣattriya and the Vaishya wives,—and the latter is the eldest and highly qualified,—the son of the Vaishya wife shall share equally with the Kṣattriya son who is the younger and is devoid of good qualities.—(C) The same rule shall apply to the case of a Kṣattriya having sons born of the Kṣattriya and Vaishya wives (the latter being the eldest and highly qualified) ;—also to that of a Vaishya having sons born of the Vaishya and Shūdra wives.—The declaration of Baudhāyana that in such cases a 'preferential share' shall be taken by the son born of a wife of the lower caste refers to cases where the son born of a wife of the same caste as the husband happens to be younger in age and devoid of good qualities ; while if the latter is possessed of good qualities, then the two shall receive equal shares (as laid down by Gautama in the present text) ; so that there is no discrepancy between the two texts.—(*Vivādaratnākara*, pp. 533-534.)

232. विष्णु 18. 1--27 ; 38—40.] ब्राह्मणस्य चतुर्वर्णेषु ये पुत्रा भवे-
युस्ते पैतृकं रिक्थं दशधा विभजेयुः । तत्र ब्राह्मणीपुत्रश्चतुरों-
शानादद्यात्, क्षत्रियापुत्रस्त्रीन्, द्वावंशौ वैश्यापुत्रः, शूद्रा-
पुत्रस्त्वेकम् ॥ अथ चेच्छूद्रापुत्रवर्जं ब्राह्मणस्य पुत्रत्रयं भवेत् तदा
नवधा धनं विभजेयुः, वर्णक्रमेण च चतुस्त्रिद्विभागीकृतानं-
शानादद्युः । वैश्यवर्जमष्टधा कृत्वा चतुरस्त्रीनेकं च समादद्युः ।
क्षत्रियवर्जं सप्तधा कृत्वा चतुरो द्वावेकं च ॥ ब्राह्मणवर्जं
षड्धा कृत्वा त्रीन् द्वावेकं च ॥ क्षत्रियवैश्यशूद्रेष्वप्येवमेव
विभागः ॥ अथ ब्राह्मणस्य ब्राह्मणक्षत्रियौ पुत्रौ स्यातां तदा
सप्तधा कृताद् धनात् ब्राह्मणश्चतुरोंशानादद्यात् त्रीन् राजन्यः ।
ब्राह्मणस्य ब्राह्मणवैश्यौ चेत् पुत्रौ तदा तद्धनात् षड्धा विभक्तान्
चतुरोंशान् ब्राह्मण आदद्यात् द्वौ वैश्यासुतः ॥ अथ
ब्राह्मणस्य ब्राह्मणशूद्रौ पुत्रौ स्यातां तदा तद्धनं पञ्चधा
विभजेयाताम्, चतुरोंशान् ब्राह्मण आदद्यात् एकं शूद्रः ॥
अथ ब्राह्मणस्य क्षत्रियस्य वा क्षत्रियवैश्यौ पुत्रौ स्यातां तदा
तद्धनं पञ्चधा विभजेयाताम् त्रीनंशान् क्षत्रिय आदद्यात्
द्वावंशौ वैश्यः ॥ अथ ब्राह्मणस्य क्षत्रियस्य वा क्षत्रियशूद्रौ
पुत्रौ स्यातां तदा तद्धनं चतुर्धा विभजेयातां त्रीनंशान्
क्षत्रिय आदद्यात् एकं शूद्रः ॥ अथ ब्राह्मणस्य क्षत्रियवैश्य-
योर्वा वैश्यशूद्रौ पुत्रौ स्यातां तदा तद् धनं त्रिधा विभजेया-
ताम्, द्वावंशौ वैश्य आदद्यात् एकं शूद्रः ॥ यदि ब्राह्मणी-
पुत्रौ द्वौ स्यातामेकः शूद्रापुत्रः तदा ब्राह्मणीपुत्रावष्टौ
भागानादद्याताम् एकं शूद्रापुत्रः ॥ अथ शूद्रापुत्रावुभौ
स्यातामेको ब्राह्मणीपुत्रः तदा षड्धा विभज्य चतुरोंशान्
ब्राह्मण आदद्यात् द्वावंशौ शूद्रापुत्रौ । अनेन क्रमेणां-
शकल्पनाऽन्यत्रापि भवति ।

If there are four sons of a Brāhmaṇa born of wives of the four castes, they shall divide the paternal property into ten parts ; of these the son of the Brāhmaṇa wife shall take four parts ; the son of the Kṣattriya wife, three parts ; the son of the Vaishya wife, two parts ; and the son of the Shūdra wife, one part.—If there are three sons of a Brāhmaṇa born of wives of three castes, but none of the Shūdra caste, then they shall divide the property into nine parts ; of which the three sons shall take four, three and two parts respectively, in the order of their castes. –If there are three sons of three castes, but none

of the Vaishya caste, then they shall divide the property into eight parts and take four, three and one parts respectively.—If there are three sons of three castes, but none of the Kṣattriya caste, they shall divide the property into six parts and take three, two and one parts respectively.—If a Brāhmaṇa has two sons, one Brāhmaṇa and the other Kṣattriya, the property shall be divided into seven parts, of which the Brāhmaṇa shall take four parts and the Kṣattriya, three.—If a Brāhmaṇa has a Brāhmaṇa and a Vaishya son, the property shall be divided into six parts, of which the Brāhmaṇa shall receive four parts and the Vaishya two. If a Brāhmaṇa has a Brāhmaṇa and a Shūdra son, the property shall be divided into five parts, of which the Brāhmaṇa shall take four parts and the Shūdra, one.—If a Brāhmaṇa or a Kṣattriya has two sons, one a Kṣattriya and another a Vaishya, the property shall be divided into five parts, of which the Kṣattriya shall take three parts and the Vaishya, two.—If a Brāhmaṇa or a Kṣattriya has two sons, one a Kṣattriya and the other a Shūdra, then the property shall be divided into four parts, of which the Kṣattriya shall take three parts and the Shūdra, one.—If a Brāhmaṇa, or a Kṣattriya, or a Vaishya, has two sons, one a Vaishya and the other a Shūdra, then the property shall be divided into three parts, of which the Vaishya shall take two parts and the Shūdra, one.—If a Brāhmaṇa has two sons from his Brāhmaṇa wife and one from a Shūdra wife, the sons of the Brāhmaṇa wife shall take eight parts and the son of the Shūdra, one part.—If he has two sons born of the Shūdra wife and one of the Brāhmaṇa wife, then the property shall be divided into six parts, of which the son of the Brāhmaṇa wife shall receive four parts, and the two sons of the Shūdra wife, two parts.—In the same manner are shares to be adjusted in other cases also.—(*Viṣṇu*, 18. 1—27; 38—40.) [Quoted in *Vivādaratnākara*, pp. 530-531; *Dāyabhāga*, p. 137.]

233. बृहन्मनु] ब्रह्मदायागतां भूमिं हरेयुर्ब्राह्मणीसुताः ।
गृहं द्विजातयः सर्वे तथा क्षेत्रं क्रमागतम् ॥

The land acquired by Brahmanical methods shall be taken by the sons born of the Brāhmaṇa wife; the house and the ancestral land shall be taken by all the sons of the twice-born castes.—(*Bṛhat-Manu*.) [Quoted in *Vivādaratnākara*,

p. 534 ; *Vivādachintāmaṇi*, p. 225 ; *Dāyabhāga*, p. 138 ; *Vibhāgasāra*, 12. 2—5 ; *Dāyanirṇaya*, 20. 1—10.]

NOTES

'*Brahmadāyāgatām*,'—'acquired by Brahmanical methods,'—*i.e.*, obtained through religious gifts, or through officiating at sacrifices and such other acts.—'*Sons of the twice-born castes*,' those belonging to the three castes.—(*Vivādaratnākara*, p. 534.)

'*Brahmadāyāgatām*,'—obtained through officiating at sacrifices or through teaching or as a religious gift.—'*Dvijātayaḥ*,'—belonging to the three castes.—(*Vivādachintāmaṇi*, p. 225.)

The land that the father had obtained as a religious gift shall go entirely to the son of the Brāhmaṇa wife, not to the Kṣattriya or other sons ; the house as also the ancestral field shall go to only those sons who belong to the three higher castes, not to the Shūdra son.—'*Brahma*' is Veda ; hence '*Brahmadāya*' must mean 'religious gift,' as such gift has been sanctioned for a Brāhmaṇa only as one who has read the Veda and studied its meaning.—(*Dāyabhāga*, pp. 138-139.)

'*Brahmadāyāgatām*,'—obtained by officiating at sacrifices, teaching and so forth.—'*Twice-born castes*,' *i.e.*, the Brāhmaṇa, the Kṣattriya and the Vaishya.—(*Vibhāgasāra*, 12. 2—6.)

The land that has been acquired by the father by virtue of his Vedic learning shall go to the son born of his *Brāhmaṇa* wife, the ancestral house and ancestral landed property shall go to the sons belonging to the first three castes. —'*Ancestral*,' *i.e.*,—acquired by the grandfather and other ancestors.—(*Dāyanirṇaya*, 20. 2. 1.)

234. बृहस्पति 25—30.] न प्रतिग्रहभूर्देया क्षत्रियादिसुताय वै ।
यद्यप्यस्य पिता दद्यान्मृते विप्रासुतो हरेत् ॥

Land obtained as a religious gift shall not be given to the son of the Kṣattriya or other wives ; if the father should give it, the son of the Brāhmaṇa wife shall take it away on the father's death.—(*Bṛhaspati*, 25. 30.) [Quoted in *Aparārka*, p. 732 ; *Mitākṣarā*, pp. 641, 669 ; *Madanapārijāta*, pp. 658, 687 ; *Vivādaratnākara*, p. 534 ; *Vivādachintāmaṇi*, p. 225 ; *Parāsharamādhava*, pp. 343, 381 ; *Dāyabhāga*, p. 139 ; *Vīramitrodaya*, p. 595 ; *Vyavahāramayūkha*, p. 103 ; *Vibhāgasāra*, 12. 2—5.]

NOTES

The implication is that land acquired by other means are to be given to the sons referred to,—though never to the son of a *Shūdra* wife ; as distinctly laid down in Bṛhaspati—'*Shūdryām dvijātibhiḥ*, etc. (*Below*).'—(*Aparārka*, p. 732.)

Though the principle of division among the sons of different castes has been laid down by Manu as 4, 3, 2, 1,—yet that must be taken as referring to property other than the land obtained as a religious gift. The implication of this text is that land obtained by purchase and such other means is to be given to the Kṣattriya and other sons also; but the son of the Shūdra wife has been specially precluded from all landed property by Bṛhaspati—'*Shūdryām dvijātibhiḥ, etc.*'; there would be no need for this special preclusion of the Shūdra, if the Kṣattriya and Vaishya sons were not entitled to landed property other than that obtained as religious gift.—(*Mitākṣarā*, pp. 669-670.)

The special mention of 'religious gift' implies that land obtained by other means is to be given.—(*Madanapārijāta*, p. 658.)

Lands acquired by purchase and other means are to be given to the Kṣattriya and other sons, as is clearly implied by the special mention of 'religious gift,' and also by the special exclusion of the Shūdra from all landed property in the text '*Shūdryām dvijātibhiḥ, etc.*'—(*Parāsharamādhava*, p. 343.)

The mention of 'religious gift' shows that the sons referred to do receive shares in lands acquired by purchase and other means, in accordance with their castes. It is for this reason too that the Shūdra son has been specially excluded from all landed property.—(*Vīramitrodaya*, p. 595.)

235. बृहस्पति 25—32.] शूद्र्यां द्विजातिभिर्जातो न भूमेर्भागमर्हति ।
सजातावाप्नुयात् सर्वमिति धर्मो व्यवस्थितः ॥

A son born of a Shūdra woman from twice-born men is not entitled to a share in the landed property; one born of a woman of the same caste (as the husband) shall receive all; such is the settled rule.—(*Bṛhaspati*, 25—32.) [Quoted in *Aparārka*, p. 732; *Mitākṣarā*, p. 670; *Madanapārijāta*, p. 658; *Vivādaratnākara*, p. 534; *Parāsharamādhava*, p. 343; *Dāyabhāga*, p. 140; *Vīramitrodaya*, p. 595; *Vyavahāramayūkha*, p. 103.]

NOTES

This text singles out the Shūdra son as specially excluded from inheriting landed property.—(*Mitākṣarā*, p. 670.)

The meaning is that sons born to any twice-born person of a Shūdra wife do not receive any share in the landed property acquired as religious gift or through purchase and other means.—(*Madanapārijāta*, p. 658.)

The son of the Shūdra wife is specially excluded from inheriting landed property.—(*Parāsharamādhava*, p. 343.)

Inasmuch as 'landed property' in general is mentioned, it follows that the Shūdra is not entitled to any land acquired by his twice-born father even by purchase and such other means.—(*Dāyabhāga*, p. 140.)

This excludes the son of the Shūdra wife from the inheritance of all kinds of landed property.—(*Vīramitrodaya*, p. 595.)

'*Landed property*,'—even such as has been acquired by purchase and other means. Other articles he does inherit. But the son of a Shūdra woman not married (to the man) does not receive any share in anything.—(*Vyavahāramayūkha*, p. 103.)

236. महाभारत] (A) क्षत्रियस्यापि भार्ये द्वे विहिते कुरुनन्दन ।
तृतीया वा भवेच्छूद्रा न तु दृष्टान्ततः स्मृता ।
अष्टधा तु धनं कार्यं क्षत्रियस्य युधिष्ठिर ।
क्षत्रियाया हरेत् पुत्रः चतुरोंशान् पितुर्धनात् ।
युद्धौपचारिकं यच्च पितुरासीद् हरेच्च तत् ॥
वैश्यापुत्रस्तु भागांस्त्रीन् शूद्रापुत्रस्तथाऽष्टमम् ॥
सोऽपि दत्तं हरेत् पित्रा नादत्तं हर्तुमर्हति ।

(B) एकैव तु भवेद् भार्या वैश्यस्य कुरुनन्दन ।
द्वितीया वा भवेच्छूद्रा न तु दृष्टान्ततः स्मृता ।
पञ्चधा तु धनं कार्यं वैश्यस्य भरतर्षभ ।
वैश्यापुत्रेण हर्तव्याश्चतुरोंशाः पितुर्धनात् ।
पञ्चमस्तु भवेद् भागः शूद्रापुत्रस्य भारत ॥
सोऽपि दत्तं हरेत् पित्र्यं नादत्तं हर्तुमर्हति ॥

(A) O descendant of Kurus, two wives have been ordained for the Kṣattriya ; he may have the Shūdra as a third, though she has not been ordained in the scriptures.

O Yudhiṣṭhira, the property of the Kṣattriya shall be divided into eight parts ; out of the father's property the son of his Kṣattriya wife shall take four parts ; he shall also take implements of battle ; the son of his Vaishya wife shall take three parts, and the eighth part shall go to the son of his Shūdra wife. This latter shall receive what is given to him by his father ; he shall not take what has not been so given.

(B) O descendant of Kurus, for the Vaishya there can be one wife ; or the Shūdra may be his second wife ; though such a wife has not been ordained in the scriptures. The property of the Vaishya shall be divided into five parts, O Chief of Bharatas ; from the father's property, the son of his Vaishya wife shall take four parts, and the fifth part shall go to the Shūdra, O Bhārata.—This latter shall receive what has been given to him by his father ; he cannot receive what has not been so given.—(*Mahābhārata*.) [Quoted in *Vivādachintāmaṇi*, p. 225 ; *Vivādaratnākara*, pp. 528-529 ; *Vibhāgasāra*, 12. 1—10.]

NOTES

These rules apply to cases where the Brāhmaṇa has four wives, Kṣattriya has three and the Vaishya, two wives. In cases where there are no such wives, the property inheritable by the sons shall not be divided into ten, eight or five parts.—'*Yuddhaupachārikam*,' such as horses, swords and the like.—(*Vivādachintāmaṇi*, p. 225.)

'*Dṛṣṭānta*' here stands for the Veda; the meaning therefore is that even though a Shūdra wife has not been ordained for the Kṣattriya (or the Vaishya), yet, if through lust, he does marry a Shūdra wife, then the son of that wife shall receive a share.—'*Yuddhaupachārikam*,' the implements of battle, such as swords and the like.—(*Vivādaratnākara*, p. 529.)

The Brāhmaṇa may have wives of all the four castes; when he has got four sons from these four wives, then the rule is that their shares are to be in the proportion of 4, 3, 2, 1 in the order of the castes. Similarly, the *Kṣattriya* may have three wives, a *Kṣattriya*, a *Vaishya* and a *Shūdra*; the son born to him from the Kṣattriya wife shall receive four shares, that born of the Vaishya wife, three shares and that born of the Shūdra wife shall have only one, the eighth share. The Vaishya may have two wives, the son born to him from the Vaishya wife shall receive four shares, and that born of the Shūdra wife, only one share, the fifth one. Thus the property shall be divided into ten parts (in the case of the Brāhmaṇa), eight parts in the case of the Kṣattriya and five parts in the case of the Vaishya.—The word '*Yuddhaupachārikam*' stands for the sword and other weapons.—(*Vibhāgasāra*, 12. 2. 1.)

237. देवल] आनुलोम्येन पुत्रस्तु पितुः सर्वस्वभाग् भवेत् ।

The son shall inherit the entire property of the father, if he has been born of a wife married in the natural order. —(*Devala*.) [Quoted in *Parāsharamādhava*, p. 344.]

NOTES

This lays down the law of inheritance in cases where there is only one son born of a wife married in the prescribed order (*i.e.*, the wife belonging to a caste lower than that of the husband).—It refers to cases other than that of the *Niṣāda* in regard to whom there is another rule—'*Niṣāda eka putrastu*, etc.'—(*Parāsharamādhava*, pp. 343-344.)

238. शङ्खलिखित] अन्यवर्णस्त्रीषु जातानां दायादर्धहानिर्वर्णक्रमेण ।

In the case of sons born of wives belonging to other castes (than that of the husband), the son of each lower caste loses half of the inheritance, in the order of the castes.—(*Shaṅkha-Likhita*.) [Quoted in *Vivādaratnākara*, p. 531.]

239. विष्णु 18. 28—31.] अथैकपुत्रा : ब्राह्मणस्य ब्राह्मणक्षत्रियवैश्याः सर्वहराः—क्षत्रियावैश्यौ वा राजन्यस्य—वैश्यस्य वैश्यः—शूद्रस्य शूद्रः ।

An only son of the Brāhmaṇa,—being a Brāhmaṇa or a Kṣattriya or a Vaishya—shall inherit the entire property ;—similarly, an only son of the Kṣattriya, of the Kṣattriya or Vaishya caste ;—also an only son of the Vaishya, being a Vaishya,—and also an only son of the Shūdra, being a Shūdra.—(*Viṣṇu*, 18. 28—31.) [Quoted in *Vivādaratnākara*, p. 531.]

NOTES

If a Brāhmaṇa who has three wives—belonging to the Brāhmaṇa, Kṣattriya and Vaishya castes,—has only one son, he will inherit the entire property, be he a Brāhmaṇa or a Kṣattriya or a Vaishya. Similarly, if a Kṣattriya having two wives has an only son, he will inherit the entire property, be he Kṣattriya or Vaishya.—Similarly, the only son of a Vaishya, who would be a Vaishya, will inherit the entire property ;—and so also the only son of the Shūdra, who would be a Shūdra, shall inherit the entire property.—The third wife for the Kṣattriya, or the second wife for the Vaishya,—(either of whom, of the Shūdra caste)—has not been mentioned here as they are not permitted by the scriptures.—(*Vivādaratnākara*, pp. 531-532.)

240. शङ्खलिखित] न शूद्रापुत्रोऽर्थभागी । यदेवास्य पिता दद्यात् स एव भागस्तस्य । गोमिथुनं चापरं दद्यात् कृष्णायसं कृष्णधान्यं तिलवर्जम् ।

The son of the Shūdra wife shall not be a sharer in the property ; what his father gives him, that shall be his share ; in addition one should give him a cow and a bull, black metal and black grains, with the exception of sesamum.—(*Shaṅkha.*) [Quoted in *Vivādachintāmaṇi*, p. 226 ; *Vivādaratnākara*, p. 536.]

241. मनु 9. 154.] यद्यपि स्यात्तु सत्पुत्रो यत्पुत्रोऽपि वा भवेत् ।
नाधिकं दशमाद् दद्याच्छूद्रापुत्राय धर्मतः ॥

Whether a Brāhmaṇa has a son or no son, he shall not, according to law, allot more than the tenth part to the son of the Shūdra wife.—(*Manu*, 9. 154.) [Quoted in *Aparārka*, p. 735 ; *Mitākṣarā*, p. 716 ; *Vivādaratnākara*, p. 535 ; *Vivādachintāmaṇi*, p. 226 ; *Parāsharamādhava*, p. 344 ; *Dāyabhāga*, p. 141 ; *Vīramitrodaya*, p. 622 ; *Vibhāgasāra*, 12. 2—8.]

NOTES

'*Has a son,*' has *any* son; or the 'son' meant may be that born of the Brāhmaṇa wife, and not that of *any* of the 'twice-born' wives. So that, if there is no son born of the Brāhmaṇa wife,—even if there are sons of *Kṣattriya* and *Vaishya* wives,—the son of the *Shūdra* wife shall receive the *eighth* part; while if there is a son of only the *Vaishya* wife, the son of the Shūdra wife shall get the *third* part.—Others however explain the phrase '*no son*' to mean *the absence of a son of any twice-born wife*; and according to this view, the residue of the property left after the tenth part has been made over to the *Shūdra* son shall go over to the *Sapiṇḍas*.—The most unobjectionable principle of division, however, would be as follows:—If the property is a large one, and there is no son of any higher caste, the *Shūdra* son shall receive only the *tenth* part; if however the property is just enough for the maintenance of a few persons only, then the whole shall go to the *Shūdra* son.—In the case of *Kṣattriyas* and others, another Smṛti has laid down the following rule in connection with sons born of the same and different castes—'Sons of a Kṣattriya are entitled to three, two and one shares; those of the Vaishya, to two and one.' — (*Yājñavalkya*, 2. 125.) That is, sons of the *Kṣattriya* from the *Kṣattriya* wife shall each receive three parts; those from the *Vaishya* wife, two parts; and those from the *Shūdra* wife, one part; so that the *Shūdra* sons receive the *sixth* part of the property of the *Kṣattriya* father and the *third* part of the *Vaishya* father.—Others again explain the sense of the present text of Manu as follows:—When he is going to give some property to the *Shūdra* son at all, the father shall collect the entire property and give to him the *tenth* part of it,—even though he be free to do as he likes, as it is going to be declared in the next verse (*Manu*, 9. 155) that 'whatever his father shall give him shall be his.'—According to this view, it would be much more reasonable to construe the text as 'the man having a son shall give, etc. etc.';—'*dadyāt*,'—'shall give,' being construed with '*satputraḥ*,'—'having a son'; otherwise the construction would be 'the person whose father has a son, or no son, shall give, etc., etc.';—which shall be a most difficult one; as to this case, the term 'having a son' shall stand for the *dead father*, while the nominative of the verb 'shall give' would be the living son or other *Sapiṇḍa* relations.—Thus then, in a case where there are only *Brāhmaṇa* and *Shūdra* sons,—and no *Kṣattriya* or *Vaishya* sons,—the *Shūdra* son is entitled, not to the *tenth* part, but to something less, *never more*. If there are ten cows, the Brāhmaṇa son shall receive four and the *Shūdra* son, one; the remaining five being divided between the *Kṣattriya* and the *Vaishya* sons. When, however, these latter do not exist, then these five cows also shall be divided between the *Brāhmaṇa* and the *Shūdra* sons. When, however, the *Brāhmaṇa* son takes the entire property, he cannot be called either a 'shareholder' or 'a receiver of four shares'; hence what has been said by Manu (9. 153) regarding the *Brāhmaṇa* taking 'four shares' would apply to a case where there are four brothers.—The *Shūdra* also receives the *tenth share* only when there are four brothers;—this share being correspondingly increased if there are two or three brothers only.—(*Medhātithi*.)

'*Satputraḥ*,'—'one who has sons born of superior wives';—'*aputraḥ*,'—having no sons of any other caste.—'*nādhikam*,'—the meaning is that when

there are no sons of any other caste, the tenth part of the property shall be given to the *Shūdra* son and the rest shall be taken by the wives and others.—(*Sarvajñanārāyaṇa.*)

Whether a Brāhmaṇa has sons born of wives of all the twice-born castes,—or he has no such sons,—in either case his immediate heir shall not give more than the tenth part of the property to his son born of the *Shūdra* wife, '*according to law.*' Thus, in view of this prohibition in regard to the son of the *Shūdra* wife, if the Brāhmaṇa has no son of the Brāhmaṇa caste, his two sons, born of his *Kṣattriya* and *Vaishya* wives, would take all the rest of the property.—(*Kullūka.*)

Even when partition takes places at the wish of the father, only the tenth part of the property shall be given to the son born of his *Shūdra* wife.—'*Satputraḥ,*'—he who has sons born of wives of all the four castes, Brāhmaṇa and the rest.—'*Aputraḥ,*'—he who has no sons born of those same wives. The rule is that according to rule, no more than the tenth part of the property shall be given. It is for this reason that we have Yājñavalkya's text (2. 125)—'*Chatustridvyēka, etc.*'—(*Rāghavānanda.*)

'*Satputraḥ,*'—having sons.—No share over and above the tenth part shall be given to the son of the *Shūdra* wife.—(*Nandana.*)

'*Satputraḥ,*'—one who has a Brāhmaṇa son.—(*Rāmachandra.*)

'*Not more*'—than the tenth part.—(*Aparārka*, p. 735.)

The meaning is that the son of the Shūdra wife, even though a 'body-born son,' does not receive a share, even when there are no other sons.—'*Satputraḥ,*'—having twice-born sons;—'*Aputraḥ,*'—not having twice-born sons. On the death of such a man, his *Kṣētraja* and other sons, or other *Sapiṇḍas,* shall not give more than the tenth of his property to his son born of the *Shūdra* wife. This implies that in a case where a Brāhmaṇa has no son of his own caste, his sons born of the *Kṣattriya* and *Vaishya* wives shall take his entire property.—(*Mitākṣarā*, p. 716.)

'*Saputraḥ*' (*v.l.*, for '*Satputraḥ*'),—one who has twice-born sons;—'*Aputraḥ,*'—one who has no twice-born sons.—Says *Lakṣmīdhara*—'If the father, being pleased with his son born of the *Shūdra* wife, gives him anything, he should give him only the tenth part of the property.'—According to *Halāyudha* and the *Pārijāta,* this text refers to such sons as are born from a *married Shūdra* wife and are absolutely devoid of good qualities.—(*Vivādaratnākara,* p. 536.)

'*Satputraḥ,*'—'one who has sons of the three higher castes.'—'*Aputraḥ*'—'one who has no such sons.'—Even by the father's favour, he is not to get more than the tenth part,—says the *Kalpataru.*—(*Vivādachintāmaṇi,* p. 226.)

This refers to a son who is not devoted to the father's service.—(*Parāsharamādhava,* p. 344.)

This precludes the giving of more than the tenth part to the son of the Shūdra wife, even when there are no twice-born sons.—(*Dāyabhāga,* p. 141.)

'*Satputraḥ,*'—who has sons born of the wife of the same caste as himself;—'*Aputraḥ,*'—who has no sons born of the wife of the same caste as himself;—on the death of such a Brāhmaṇa, his *Kṣētraja* and other sons, or any one else who may inherit his property, shall not give to his son born of the Shūdra wife anything more than the 'tenth part' of his property. From this

same text, it follows that if the Brāhmaṇa has no *Brāhmaṇa* sons, his sons born of the *Kṣattriya* and *Vaishya* wives shall take all the property of their *Brāhmaṇa* father.—The texts of Yājñavalkya and others that have spoken of the sons of the four castes receiving shares in the proportion of 4, 3, 2 and 1 shares (whereby the *Shūdra* son should get one share) should be taken as referring to such sons of the Shūdra wife as are possessed of exceptionally good character.—(*Vīramitrodaya*, p. 622.)

'*Satputraḥ*'—having sons of three higher castes.—(*Vibhāgasāra*, 12. 2—8.)

242. मनु 9. 179.] दास्यां वा दासदास्यां वा यः शूद्रस्य सुतो भवेत् ।
सोऽनुज्ञातो हरेदंशमिति धर्मो व्यवस्थितः ॥

If a son is born to a Shūdra from a female slave, or from the female slave of a slave, he shall, when permitted, receive a share. Such is the settled law.—(*Manu*, 9. 179.) [Quoted in *Vivādaratnākara*, p. 537 ; *Vivādachintāmaṇi*, pp. 226-227 ; *Dāyabhāga*, p. 143 ; *Vibhāgasarā*, 12. 2—12.]

NOTES

In the case of Shūdras, the child born from an unmarried woman, or from an 'unauthorised woman,' is a 'son.'—From the present text, it is clear that if a slave were to beget a child upon a female slave belonging to another slave, the child would belong to the former.—'*When permitted*'—by his father—'*shall receive a share*,'—equal to that of the 'legitimate' son,—when the partition is done during the father's lifetime,—or when the father has declared to his sons that 'this child shall receive a share equal to yours.'—If however the father does not permit it, what should be done has been declared in another *Smṛti* :—'The son born to a Shūdra from a female slave shall receive a share according to the wish (of his father), but *on the father's death his brothers shall allot to him half a share* ;—if he has no brothers, he shall take the entire property, except when there are the father's daughter's sons,' *i.e.*, in the absence of 'legitimate' sons, he shall inherit the whole property only if there is no daughter's son ; if the daughter's son is there, this latter shall be treated like a 'legitimate' son. In the case of the Brāhmaṇa and other castes, sons born of slave-girls are entitled to mere subsistence.—(*Medhātithi*.)

If a son is born to a Shūdra from an unmarried slave-girl, or from a slave-girl belonging to his slave,—such a son shall be given a share. Being permitted by the father he shall receive a share ; if not so permitted, he shall receive mere subsistence. This implies that the Shūdra may have a 'son' born to him from a Shūdra woman, not married to him, but belonging to him somehow,—but not from a woman married to some one else.—(*Sarvajñanārāyaṇa*.)

If a son is born to a *Shūdra* of a slave-girl of any kind,—or of a slave-girl related to a slave,—this son, if permitted by the father to receive a share equal to that of his sons from his married wife, shall receive an equal share.—(*Kullūka*.)

The son born to a Shūdra from a slave-girl, or from the wife of a slave of his,—when permitted by the father, during his lifetime, shall receive a share equal to that of his sons of his married wife.—(*Rāghavānanda.*)

The addition of the qualification '*permitted*' implies that if he is not so permitted, he shall not receive it.—(*Nandana.*)

'*Dāsyām,*'—*i.e.*, from a Shūdra wife married to him.—'*Dāsadāsyām,*'—the slave-girl belonging to the slave belonging to the Shūdra.—(*Rāmachandra.*)

'*Dāsyām,*'—from a slave-girl, belonging to any of the categories of slaves enumerated by Manu ;—'*dāsadāsyām,*' on a slave belonging,—not married—to a slave of his ;—according to the *Kalpataru*, this means the slave-girl belonging to his servant.—(*Vivādaratnākara*, p. 537.)

In the case of the Shūdra, his son born from a slave-girl or other woman not married to him, shall, when permitted by the father, receive a share equal to that of his other sons.—(*Dāyabhāga*, p. 143.)

'*When permitted*'—*by the father.*—(*Vibhāgasarā*, 13. 1. 1.)

243. गौतम 28. 38.] शूद्रापुत्रोऽनपत्यस्य शुश्रूषुश्चेल्लभते वृत्तिमूल-मन्तेवासिविधिना।

The son born to a childless (twice-born) person of a Shūdra woman, if obedient like a pupil, receives a provision for maintenance.—(*Gautama*, 28. 38.) [Quoted in *Vivādaratnākara*, p. 536.]

NOTES

If a person of the three higher castes, who has no son of a twice-born caste, has a son born to him of a Shūdra woman not married to him, this son shall receive some provision for his maintenance, in the shape of a plot of land for cultivation,—if he is '*obedient,*' willing to serve, '*like a pupil.*'—(*Vivādaratnākara*, p. 536.)

244. गौतम 28. 45.] शूद्रापुत्रवत् प्रतिलोमासु।

Sons born of wives married in the reverse order of the castes shall be treated like the son born of a Shūdra woman.—(*Gautama*, 28. 45.) [Quoted in *Vivādaratnākara*, p. 537 ; *Vivādachintāmaṇi*, p. 227 ; *Vibhāgasāra*, 13. 1—4.]

NOTES

The son begotten by a *Shūdra or* a *Vaishya or* a *Kṣattriya* on a woman of a higher caste—Vaishya and the rest—is to be treated like the son born to a Brāhmaṇa from a Shūdra woman, *i.e.*, he is to receive some such means of livelihood as ploughs, shears and the like.—(*Vivādachintāmaṇi*, p. 227.)

The meaning is that sons born of the other castes are to be treated like the son born of a Shūdra wife, *i.e.*, they are to receive mere subsistence, provided they are obedient like pupils.—(*Vivādaratnākara*, p. 537.)

The son born to the Shūdra or other castes from wives of the Vaishya or other higher castes receives something in the shape of the plough and such other implements necessary for obtaining a livelihood, just as the son born (to the higher castes) from a Shūdra woman.—(*Vibhāgasāra*, 13. 1–4.)

245. विष्णु 18. 32-33.] द्विजातीनां शूद्रस्त्वेकपुत्रोऽर्धहरः । अपुत्र-
रिक्थस्य या गतिः साऽर्धस्य द्वितीयस्य ।

A Shūdra who is the only son of a father belonging to a twice-born caste shall inherit one-half of the property; the second half shall be dealt with in the same manner in which the property of a childless person is dealt with.—(*Viṣṇu*, 18. 32-33.) [Quoted in *Vivādaratnākara*, p. 535; *Dāyabhāga*, p. 141.]

NOTES

'*Belonging to a twice-born caste,*'—other than the Brāhmaṇa, *i.e.*, a Kṣattriya or a Vaishya; because the Shūdra son of the Brāhmaṇa has been declared by Devala as entitled to *one-third* of the property.—'*The second half,*' which should form the share of the Brāhmaṇa (?).—(*Vivādaratnākara*, p. 535.)

This refers to a son who is endowed with superior learning and humility.—(*Dāyabhāga*, p. 141.)

246. बृहस्पति 25. 31.] अनपत्यस्य शुश्रुषुर्गुणवाञ्छूद्रयोनिजः ।
लभेताजीवनं शेषं सपिण्डाः समवाप्नुयुः ॥

If a childless person has a son born of a Shūdra woman, who is obedient and possessed of good qualities, he shall receive a maintenance; the *Sapiṇḍas* shall take the rest of the property.—(*Bṛhaspati*, 25. 31.) [Quoted in *Aparārka*, p. 735; *Vivādaratnākara*, p. 536; *Vivādachintāmaṇi*, p. 226; *Dāyabhāga*, p. 141; *Vyavahāramayūkha*, p. 103; *Vibhāgasāra*, 12. 2–10.]

NOTES

The meaning is that the property of a childless person goes to his *Sapiṇḍas*.—(*Aparārka*, p. 735.)

This refers to the son born of a woman not married to the father.—(*Vivādaratnākara*, p. 536.)

'*Anapatyasya,*'—'childless,' stands for 'one who has no son of the three higher castes.'—'*Sapiṇḍas,*' the nearmost collaterals; in the absence of these latter, even distant collaterals.—This rule refers to the case of the son of a Shūdra woman not married to the man.—(*Vivādachintāmaṇi*, p. 226.)

The meaning is that the son shall be given some land for cultivation which would suffice for his subsistence.—(*Dāyabhāga*, p. 141.)

This is what is to be done after the death of the father.—(*Vyavahāramayūkha*, p. 103.)

If a Brāhmaṇa has no sons of the three higher castes, his property goes to his *Sapiṇḍas*.—This refers to cases where the man has a Shūdra son born of a woman not married to him. In case he has a Shūdra son born of a *married* Shūdra wife, he would receive a share.—(*Vibhāgasāra*, 12. 2–11.)

247. विष्णु] अथ चेच्छूद्रापुत्रवर्जं ब्राह्मणस्य पुत्रास्तदा नवधा धनं
विभजेयुः क्षत्रियादावप्येवम् ।

If a Brāhmaṇa has sons of all castes except the Shūdra, they shall divide the property into nine parts. So also in the case of a *Kṣattriya* (and Vaishya).—(*Viṣṇu*.) [Quoted in *Vivādachintāmaṇi*, p. 225 ; *Vibhāgasāra*, 12. 2—4.]

NOTES

This same rule applies to the case of the *Kṣattriya* and other castes.—(*Vibhāgasāra*, 12. 2—4.)

248. देवल] निषाद एकः पुत्रस्तु [*v.l.*, एकपुत्रस्तु] विप्रस्य स तृतीयभाक्
द्वौ सपिण्डः, सकुल्यो वा, स्वधादाताऽथवा हरेत् ।
कुल्याभावे स्वधादाता आचार्यः शिष्य एव वा ।
सर्वास्वापत्सु तान् वर्णांस्तथैव प्रतिपादयेत् ॥

If a *Niṣāda* is the only son of a Brāhmaṇa, he receives the third part of the property; the remaining two parts are to be taken by the *Sapiṇḍa* or the *Sakulya*, or whoever offers the *Shrāddha* ;—in the absence of Sakulyas the *Shrāddha* is offered by the Āchārya or the Pupil.—In all extreme cases, these two parts shall be made over to persons belonging to the same *gotra* as the dead Brāhmaṇa.—(*Devala*.) [Quoted in *Vivādaratnākara*, pp. 534-535 ; *Parāsharamādhava*, p. 344 ; *Dāyabhāga*, p. 140 ; *Vīramitrodaya*, p. 595.]

NOTES

'*Niṣāda*' is one born of a Brāhmaṇa father and Shūdra mother ; hence what the text means is that the son of a Brāhmaṇa born of a Shūdra woman is to receive the third of the property, the remaining two shares go to the *Sapiṇḍa*, or, in the absence of the *Sapiṇḍa*, to the *Sakulya*, and in the absence of the *Sakulya*, to the *Āchārya* or the Pupil.—'*Sarvāsvāpatsu*,' 'in all extreme cases,' in the absence of all, *Sapiṇḍa*, *Sakulya* and the rest ; '*one should make it over*' to the persons belonging to the same *gotra* as the father of the said *Niṣāda*.—(*Vivādaratnākara*, p. 535.)

The son born to a Brāhmaṇa from a *Shūdra* woman is called '*Niṣāda*.'—(*Dāyabhāga*, p. 140.)

The son born to a Brāhmaṇa from a Shūdra woman is called '*Niṣāda*';—if this *Niṣāda* is the only son.—This rule refers to such son of the Shūdra woman as is extremely well-behaved and possessed of excellent qualities.—(*Vīramitrodaya*, p. 595.)

249. अर्थशास्त्र II, p. 39.] तुल्यातुल्ययोरेकपुत्रः सर्वं हरेत् बन्धूंश्च बिभृयात् ॥ ब्राह्मणानां तु पारशवः तृतीयमंशं लभेत । द्वावंशौ सपिण्डः कुल्यो वाऽऽसन्नः स्वधादानहेतोः । तदभावे पितुराचार्योऽन्तेवासी वा ।
क्षेत्रे वा जनयेदस्य नियुक्तः क्षेत्रजं सुतम् ।
मातृबन्धुः सगोत्रो वा तस्मै तत् प्रदिशेद्धनम् ॥

If a man has only one son, from a wife of equal or unequal caste, he shall take the entire property and support the relatives.—The *Pārashava* son of a Brāhmaṇa shall receive the third part of the property ; the remaining two parts shall go either to his *Sapiṇḍa* or a near *Sakulya*, by virtue of these latter offering the *Shrāddha* to him ; in the absence of these the property shall go to the father's Āchārya or Pupil ; or his *Sagotra* or maternal relative, on being authorised, shall beget on the wife of the dead man, a *Kṣētraja* son for him, and make over the property to this son.—(*Arthashāstra* II, p. 39.)

250. अर्थशास्त्र II, p. 38.] ब्राह्मणस्यानन्तरापुत्रस्तुल्यांशः ।
क्षत्रियवैश्ययोरर्धांशः—तुल्यांशो वा मानुषोपेतः ।

The son born to a Brāhmaṇa from his wife of the next lower caste is an equal sharer (with a son of the same caste). Of the Kṣattriya and the Vaishya, the son born of wives of the next lower caste receives only half a share, or an equal share, if he is endowed with manly qualities.—(*Arthashāstra* II, p. 38.)

251. अर्थशास्त्र II, p. 38.] चातुर्वर्ण्यपुत्राणां ब्राह्मणीपुत्रश्चतुरोंऽशान् हरेत्, क्षत्रियापुत्रस्त्रीनंशान्, वैश्यापुत्रो द्वावंशौ, एवं शूद्रापुत्रः । तेन त्रिवर्णद्विवर्णपुत्रविभागः क्षत्रियवैश्ययोर्व्याख्यातः ।

Among the Brāhmaṇā's sons belonging to the four castes, the son of his Brāhmaṇa wife shall take four shares, the son of his Kṣattriya wife, three shares, the son of his Vaishya wife, two shares, and the son of his Shūdra wife, one share.—This same rule is applicable to the Kṣattriya and Vaishya's sons of the three and two castes respectively.—(*Arthashāstra* II, p. 38.)

252. अर्थशास्त्र II, p. 42.] ब्राह्मणस्य वैश्यायामम्बष्ठः, शूद्रायां निषादः पारशवो वा । क्षत्रियस्य शूद्रायामुग्रः वैश्यस्य शूद्र एव । सवर्णासु चैतेषामचरितव्रतेभ्यो जाता व्रात्याः । इत्यनुलोमाः ॥ शूद्राद् आयोगवक्षत्तचाण्डालाः । वैश्यान्मागधवैदेहकौ । क्षत्रियात् सूतः । एते प्रतिलोमाः ।

The son born to a Brāhmaṇa from a Vaishya wife is *Ambashṭha* ; that from a Shūdra wife, *Niṣāda* or *Pārashava* ; the son born to a Kṣattriya from a Shūdra wife is *Ugra* ; of the Vaishya from a Shūdra wife is a *Shūdra*. Sons born to these from wives of the same caste, but not married, are *Vrātya*. These are in the natural order.—The sons born to a Shūdra (from the Vaishya, the Kṣattriya and the Brāhmaṇa wives respectively) are *Āyogava*, *Kṣattṛ* and *Chāṇḍāla* ; those to the Vaishya (from the Kṣattriya and the Brāhmaṇa wives) are *Māgadha* and *Vaidehaka* ; that to the Kṣattriya (from the Brāhmaṇa wife), *Sūta*. These are in the reverse order.—(*Arthashāstra* II, p. 42.)

253. अर्थशास्त्र II, p. 38.] सूतमागधव्रात्यरथकाराणामैश्वर्यतो विभागः । शेषास्तमुपजीवेयुः ।

Among the *Sūta*, the *Māgadha*, the *Vrātya* and the *Rathakāra*, the division of property shall be in accordance with their influence ; the rest will live under the one who gets the property.—(*Arthashāstra* II, p. 38.)

Section II [3 (D)]

PARTITION AMONG SONS

(a) NORMAL PARTITION (WITHOUT PREFERENTIAL SHARE)

254. गौतम] ऊर्ध्वं पुत्रः पितुः रिक्थं विभजेरन्—निवृत्ते रजसि मातुः—
जीवति पितरि चेच्छति च ।

After their father, the sons should divide the property; or when the mother has passed child-bearing; or during the father's lifetime, if he is willing.—(*Gautama.*) [Quoted in *Mitākṣarā*, p. 616; *Vivādaratnākara*, p. 463; *Smṛtitattva* II, p. 168.]

NOTES

The 'father's death' is the *first* occasion for partition; 'the mother having passed child-bearing' is the *second* occasion; and 'during the father's lifetime, if he is willing' is the *third* occasion [and the *fourth* occasion is when the father is unrighteous or has become an invalid, etc., etc., as asserted by *Shaṅkha* in the text '*Akāmē pitari*, etc.'—says the *Subodhinī.*]—[According to the *Bālambhaṭṭi*, '*ichhati cha*' means 'while he still harbours a hankering after sense-objects.']—(*Mitākṣarā*, pp. 616-617.)

This refers to the grandfather's (*i.e.*, ancestral) property. It is established that in the partition of the ancestral property, the father's—and not the son's—desire is the sole determining factor.—(*Smṛtitattva*, p. 168.)

255. मनु 9. 104.] ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् [*v.l.*, सह]
भजेरन् पैतृकं रिक्थमनीशास्ते हि जीवतोः ॥

After the death of the father, and of the mother, the brothers, being assembled, shall divide *equally* [*v.l.*, among themselves] the parental property; while the parents are alive, they have no power.—(*Manu*, 9. 104.) [Quoted in *Aparārka*, p. 718; *Mitākṣarā*, p. 621; *Smṛtichandrikā*, p. 598; *Vivādaratnākara*, p. 455; *Vivādachintāmaṇi*, p. 193; *Vivādachandra*, 19. 1—8; *Dāyabhāga*, pp. 11, 16, 28, 58; *Parāsharamādhava*, p. 326; *Vīramitrodaya*, p. 525; *Vyavahāramayūkha*, p. 94.]

NOTES

For Notes see Sec. I, 17.

'*Ūrdhvam pituḥ.*'—This indicates the time for the division of the father's property;—'*mātuḥ ūrdhvam*' indicates the time for the division of the mother's property. Thus, the meaning of the text comes to be this: After the father's death, the father's property may be divided, even though the mother

may be living ;—similarly, on the mother's death, the mother's property may be divided, even though the father may be living ;—there would be no point in waiting for the death of both for the dividing of the property of either *one* of the parents.—(*Parāsharamādhava*, pp. 326-327.)

256. याज्ञवल्क्य 2. 118.] विभजेरन् सुताः पित्रोरूर्ध्वं रिक्थमृणं समम् ।
मातुर्दुहितरः शेषमृणात् ताभ्य ऋतेऽन्वयः ॥

After the death of the parents, the sons should divide the property and the debt equally ; but the daughters shall divide what remains of the mother's property after the payment of her debts ; in the absence of daughters, *the son* [or, *the offspring of the daughters*, according to *Aparārka*.] [Quoted in *Smṛtichandrikā*, pp. 616, 663 ; *Madanapārijāta*, p. 647 ; *Vivādaratnākara*, p. 481 ; *Parāsharamādhava*, pp. 334, 371 ; *Dāyabhāga*, pp. 58, 65 ; *Vīramitrodaya*, pp. 563, 577 ; *Vyavahāramayūkha*, pp. 100, 160 ; *Vibhāgasāra*, 4. 1–3.]

NOTES

Sec IV, 40.

After the death of the parents, the sons shall pay off the father's debts, and divide the property.—The term '*Suta*' has been used for the purpose of indicating that it is the 'legitimate' son that is meant here.—'*Pitroḥ ūrdhvam*,' *i.e.*, after the death of the father and the mother';—*i.e.*, the father's property shall be divided after the father's death and the mother's property after the mother's death.—Even when there is no property (left by the parents), each of the children shall pay his share of the debts ; as the '*equality*' spoken of pertains to the debt as well as to the property.—The *unequal* division mentioned in another Smṛti (*Manu*)—'*Jyeṣṭhasya vimsha uddhāraḥ, etc.*—should be understood to pertain to cases where the brothers agree to make the unequal division.—Others, however, explain all those texts that speak of unequal division as referring to cases where the eldest brother happens to be possessed of very superior qualifications, on the basis of the view that wealth is intended for the performance of religious duties (and the better qualified son would be better able to discharge those duties).—This, however, is not right ; as in reality the property serves the purposes of the man (and not of the religious duties). There are, it is true, certain texts which declare that if a man omits to perform the *Agnihotra* and other rites, his wealth should be taken away ; but they are only meant to be checks upon men inclined to stray from the path of duty ; they do not mean that wealth is for the purpose of performing sacrifices. Hence we conclude that there can be unequal division only when the brothers wish it to be so.—Then again, though Gautama has declared that 'brothers addicted to unrighteous ways are not to receive a share,' yet this has been declared to be the view of 'some people' ; and in reality this also is only meant to be a check upon

immoral people.—Just as the sons are to divide the father's property equally among themselves,—so also are the daughters to divide the mother's property; but the daughters are to divide only the balance left after the payment of the mother's debts; they are not to pay the debts of the mother if she has left no property.—But this does not mean that the sons have nothing to do with the mother's property; because '*in the absence of daughters*, the *anvaya*,' *i.e.*, the son, shall receive the mother's property. Others, however, explain this passage to mean that 'in the absence of the daughters, the *anvaya of the daughters* themselves shall receive the property.' But this view is not correct, as the conclusion pointed to by all authorities is that 'when there are no daughters, the mother's property is to go to the sons of that mother.'—(*Vishvarūpa.*)

After the death of the father and the mother, the sons shall equally divide their property, *i.e.*, as many sons there may be into so many parts shall the property and the debt be partitioned and then divided; so that each man bears that same part of the debt as the part of the property that he receives.—Thus then, in cases where the special rules laying down unequal division are adopted, the division of the debt shall be along the same unequal lines as the division of the property.—As regards the mother's property, after the debts have been paid off, the balance shall be divided among themselves by the daughters;—in the absence of daughters, the 'offspring' of the daughters; and in the absence of the daughters and also of their offspring, the property is to be divided among the sons (of the deceased mother).—What is meant is that if, after the death of the parents, the sons make a division of the property, they should divide it equally. This rule of equal division refers to all cases where the division is made by the brothers,—also where they do it during the father's lifetime; it does not bind the father in making the division among his sons. It is not meant that the sons *must* divide the property.—(*Aparārka.*)

This text lays down another occasion for partition, also the persons making the partition and the method of partition.—'*Pitroḥ*'—the mother and father;—'*ūrdhvam*,' after the death of;—this points out the *time* for partition.—'*Sutāḥ*,'—sons;—this mentions the *persons* making the partition.—'*Samam*,'—equally;—this mentions the *method* of partitioning.—Both the property and the debt are to be divided equally.—It might be argued that—Manu (9. 105 and 112 and 116) has recommended an *unequal* division of property by sanctioning 'preferential shares' to be assigned to the eldest and other sons, when division takes place after the father's death,—and again in 9. 114, the father is told to make an unequal division during his lifetime; so that it would seem that whenever the partition is to be made, the division should be *unequal.*—But our answer to this is that it is true that *unequal division* has been sanctioned by the scriptures; yet it should not be carried out in practice; because it is not favoured by the people. In fact, we have a text declaring that 'Just as the practice of *Niyoga* and the *Killing of the cow* is not in vogue in the present age, so also is the unequal division of property.'—Āpastamba also has declared the general rule to be that—'During his lifetime the father shall divide the property among his sons equally'; and then he goes on to declare the opinions of some people to the effect that 'the eldest son is the only inheritor,' or that 'the eldest is to receive a black cow, etc.,

etc.,'—and he finally concludes by saying that all these later opinions are opposed to the scriptures. So that the inheritance should always be divided *equally*.—It having been declared that 'the sons shall divide the property of the parents,' the text adds an exception in regard to the mother's property. '*But the daughters, etc., etc.*,'—the daughters shall divide the mother's property,—whatever remains of it after the debts incurred by the mother have been paid off. If the property left by the mother is less than the amount of her debts,—or just enough to pay it off,—then, in that case the property shall be taken by her sons; the sense of all this is that it is the duty of the *sons*, not the *daughters*, to pay off the mother's debts; but what remains of the mother's property after the payment of the mother's debts, that shall be taken by the daughters;—and this is only right; because the body of the daughter being constituted of a larger number of constituents from the mother's body, the woman's property should always go to the daughter; and, similarly, the son's body containing a larger number of particles from the father's body, the father's property should go to the son.—In regard to the daughter, Gautama, (28. 24) has laid down a distinction, whereby among the daughters, the *unmarried* ones have the prior claim to the mother's property, and among the *married* ones, the less wealthy has the prior claim.—If there are no daughters, then the '*anvaya*,'—*i.e.*, the son (the grandson) and so forth. Though this has been already said in the first half—where the sons are declared to divide the property of the father *and mother*, yet it has been reiterated for the purpose of making the position clear.—(*Mitākṣarā.*)

This text speaks of partition among the sons after the father's death.—After the death of the father and the mother, the sons shall divide equally the property and the debts of the father and mother. As regards the mother's property,—what remains of it after the payment of her debts shall be divided equally among the sons and the daughters; the mother's debts shall be payable by the sons.—'*In the absence of daughters*,'—*i.e.*, if there are no daughters living,—the '*anvaya*,' *i.e.*, sons, of the daughters shall receive the share that should have been their mother's;—as declared by Manu,—'*Jananyām samsthitāyām, etc.*'; and Nārada:—'*Māturduhitaro' bhāve, etc.*';—and *Bṛhaspati*,—'*Strīdhanam syādapatyānām, etc.*';—Gautama—'*Strīdhanam duhitṝṇām, etc.*';—and Vashiṣṭha—'*Atha bhrātṝṇām dāya, etc.*';—(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

All the sons are equal sharers in the property and the debt of the parents.—The 'debt' meant here is that incurred by the father.—(*Smṛtichandrikā*, p. 616.)—After the mother's death, her sons shall divide equally her property and her debts; if such were not the meaning, the inclusion of the mother in the compound would have no sense.—(*Ibid.*, p. 663.)

There are four occasions for the division of property: (1) During his lifetime the father himself may wish to make a division of the property—[*Yājñāvalkya*: '*Vibhāganchet pitā kuryāt, etc.*']; (2) Where the mother has passed the child-bearing age and the father has turned his face against things of the world, the sons may make a division, even without the father's wishing it.—[*Nārada*: '*Māturnivṛtte rajasi, etc.*'];—(3) Even though the mother has not passed the child-bearing age and the father is not willing to partition, yet if he has taken to immoral ways of life or has been stuck down by an incurable disease,

the sons may seek to divide the property—[*Shaṅkha* : '*Akāme pitari rikhtha-vibhāga, etc.*'] ;—(4) After the death of the parents ;—it is this fourth that is spoken of in the present text.—After the death of the father and the mother, the sons should equally divide their property as also their debts.—(*Madana-pārijāta*, pp. 644—648.)

The *Parāsharamādhava* (pp 334—336) contains very nearly the same words as the *Mitākṣarā* above.—The meaning is that the sons shall take that portion of the mother's property which may be left over after the clearance of her debts.—(*Ibid.*, p. 371.)

So long as there are daughters, the sons are not entitled to share the mother's property ;—when there are no daughters, then the '*anvaya*,' the sons, are entitled to share it,—these two facts being asserted in the second line of the verse, the first line should be taken as referring only to the father's property : otherwise there would be an unnecessary repetition.—When Yājña-valkya says that 'the brothers shall divide the property after the death of the mother and the father,' he enjoins 'the death of both the parents' as the occasion for division ; and from this it is clear that the death of both is meant.—(*Dāyabhāga*, pp. 58-59.)

'*Pitrorūrdhvam*' lays down the *time* for partition,—'*Sutāḥ*' mentions the *persons* making the division,—'*samam*' lays down the *method* of the division. Such is the view of the *Mitākṣarā*.—Though *unequal* division is found to have been sanctioned in several texts, yet it should be taken as forbidden in the present age ; and the method of unequal division should not be adopted.—(*Vīramitrodaya*, pp. 563—565.)—'*In the absence of daughters*,' *the* '*anvaya*,' *i.e.*, the offspring or progeny, the son (grandson and the rest). Though this would appear to be a repetition of what has been said in the first half, regarding the sons dividing the property of the '*parents*,' yet this difficulty has been tried to be explained by the Mitākṣarā (see above).—There is no such difficulty in the view of those who explain '*anvaya*' to mean 'the offspring *of the daughters*,' *etc.*, the daughter's son, grandson and so forth.—(*Ibid.*, p. 577.)

This describes the equal division that takes place after the father's death.—(*Vyavahāramayūkha*, p. 100.)—What is said here regarding the daughters receiving the mother's property refers to such property of the mother as she may have acquired by means of spinning and such industries,—as distinguished from the property technically classed under '*Strīdhana*.'—(*Ibid.*, p. 160.)

257. बृहस्पति] पित्रोरभावे भ्रातॄणां विभागः सम्प्रदर्शितः ।
मातुर्निवृत्ते रजसि जीवतोरपि शस्यते ॥

Division among brothers has been declared to come after the death of their parents ; even during their lifetime, it is commended to come on the mother passing the child-bearing age.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 462 ; *Dāya-bhāga*, pp. 26, 60 ; *Smṛtitattva* II, p. 167 ; *Vyavahāramayūkha*, p. 94.]

NOTES

Here also the further condition '*nirtte chāpi ramaṇe*' (of Nārada's text) is meant to be understood.—(*Vivādaratnākara*, p. 462.)

This indicates the time for the partitioning of the *grandfather's* property; it cannot be taken as referring to the father's property; for if it did, then there would be no sense in the rule embodied in Manu (9. 216) and Nārada (13.44) to the effect that 'a son born after partition shall take the father's share'; as after 'the mother has passed the child-bearing age,' no son could be born.—Nor can this text be taken as referring to the mother's property; as in that case, the mother would become devoid of all property. For these reasons the condition—'on the mother passing the child-bearing age'—must pertain to the *grandfather's* property.—,(*Dāyabhāga*, p. 26.)—The 'division' spoken of in the first half of the verse as coming *on the death of both the parents* must be taken as referring to the *father's* property; firstly, because so long as the mother 'past the child-bearing age' is alive, the division could not pertain to her property; and secondly, because in the clause '*Jīvatorapi shasyate*,' the particle '*api*,' 'even,' indicates that what is 'commended' is the division that comes after the death of the parents.—(*Ibid.*, p. 60.)

Bṛhaspati here declares that there shall be division of the *grandfather's* property only after the mother has passed the child-bearing age.—The term 'mother' here must include the *step-mother* also; because it is possible for a son being born to the father from her.—This text must refer to the *grandfather's* property; it cannot refer to the father's property, as a share has been assigned in a text of Bṛhaspati—'*Pitrā saha vibhaktā ye, etc.*,'—to the son born after partition.—(*Smṛtitattva* II, pp. 167-168.)

The second line sets forth an exception to the general rule propounded by Manu (9. 104) to the effect that 'during the lifetime of the parents, the sons have no power.'—(*Vyavahāramayūkha*, p. 94.)

258. नारद 16. 2-3.] (A) अत ऊर्ध्वं पितुः पुत्रा विभजेयुर्धनं समम् ।
(B) मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च ॥
[^1]निवृत्ते वापि रमणे [*v.l.*,—(*a*) निवृत्ते वापि रमणात्,
(*b*) निरस्ते चापि रमणे (*c*) निरपेक्षे च रमणे,
(*d*) विनष्टे. वाप्यशरणे] पितर्युपरतस्पृहे ॥

(A) After the father's death the sons shall divide the property equally among themselves;—(B) and also when the mother has passed the child-bearing age, the sisters have been given away in marriage and the father having his longings ceased, has lost all capacity for enjoyment.—(*Nārada*, 16. 2-3.) [Quoted in *Smṛtichandrikā*, p. 605; *Aparārka*, p. 718; *Mitākṣarā*, p. 616; *Vivādaratnākara*, p. 462; *Vivādachintāmaṇi*, p. 195; *Parāsharamādhava*, p. 333; *Dāyabhāga*, pp. 18, 24; *Vīramitrodaya*, pp. 551, 557; *Vyavahāramayūkha*, p. 95.]

NOTES

Even though there be no defects in the father, yet, under certain circumstances, the sons may make a division of the property.—The meaning of the second and third lines is that—when it has become definitely certain that the parents can have no more children, when the female children have been married, and when the father has lost all interest in wealth,—the sons shall divide his property.—Baudhāyana, however, has declared the agency of the father in this division also—'property can be divided with the consent of the father.'—(*Smṛtichandrikā*, pp. 605-606.)

'*Samam*';—this sentence (A) has asserted the division of property by the sons after the death of the father.—The clause '*putrāḥ samam dhanam vibhajēyuḥ*,'—'the sons shall divide the property equally among themselves,'—has to be construed with the second sentence (B) also.—(*Aparārka*, p. 718.)

The first sentence (A) declares the first occasion of partition—on the father's death; the second sentence (B) mentions the second occasion,—even during the father's lifetime, if he has ceased to have any desires and consequently given up all pleasures, and the mother has passed the child-bearing age, the partition can be made by the desire of the sons themselves;—the words 'the sons shall divide the property equally among themselves' of the first sentence being construed with the second sentence also.—(*Mitākṣarā*, pp. 615-616.)

Nārada says this in connection with the subject of the division of property by the sons.—'*Prattāsu*,'—being married;—'*nivṛttē ramanē*,'—lost all capacity for enjoyment;—'*uparataspṛhē*,'—has lost all longing for things. The *Prakāsha* has put down the two readings;—'*nirastē chāpi ramaṇē*' and '*nirapēkṣē cha ramaṇē*'; and *Halāyudha* has read '*nivṛttē vāpi ramaṇāt*'; but from the explanations provided by these, it makes no difference in the meaning.—(*Vivādaratnākara*, p. 462.)

This text occurs in connection with the subject of the partition of property by the sons.—'*Prattāsu*,'—being married;—'*ramaṇē*,'—the father's capacity for enjoyment;—'*uparataspṛhē*,'—devoid of all longing for objects of sense.—(*Vivādachintāmaṇi*, p. 195.)

Nārada here lays down another occasion for partition.—(*Parāsharamādhava*, p. 388.)

'*Vinaṣṭē*' [*v.l.*, for *nivṛttē*], become an outcaste;—'*asharaṇē*,' [*v.l.*, for '*ramaṇē*'], ceased to be a householder.—By the presence of the terms '*uparataspṛhē*,' and the rest it is indicated that the sons have the rights of ownership over the father's property; so that the occasion mentioned here is one for partition at the wish of the sons.—(*Dāyabhāga*, pp. 18-19.)—On his becoming an outcast, or free from all longings, or dying, the father's ownership over property ceases; so that this is the first occasion for the division of property; the second occasion for it would be when the father being alive and his ownership being intact, he wishes to have the division made.—(B) '*Māturnivṛttē rajasi*,'—'the mother having passed the child-bearing age,' pertains to the grandfather's property; there being no chance of another son being born when the mother has passed that age;—on such an occasion also the partition could take place only when the father desired it.—If the ancestral (grandfather's)

property were partitioned before the mother had passed the child-bearing age, the sons that would be born after the partition would have no means of subsistence; which would be wrong.—The phrase '*dattāsu* (*v.l.*, for '*pattāṣu*') *bhaginīṣu*' is not meant to lay down another occasion for partition; it is meant to emphasise the necessity of the daughters being married.—(*Ibid.*, p. 24.)

The first sentence (A) asserts the partition of the property after the father's death;—Jīmūtavāhana (Dayabhāga, see above) has adopted the reading '*vinaṣṭē vāpyasharaṇē*' and rejected the reading '*nivṛttē vāpi ramaṇāt.*'—But this is not right.—'The sons shall divide the property'—this clause has to be construed along with the second sentence (B) also.—(*Vīramitrodaya*, pp. 551-552.)

'*Ramaṇa*' is sexual desire;—'*uparataspṛha,*' free from all attachment.—'*Prattāsu bhaginīṣu,*' 'the sisters having been given away';—this has to be construed both ways—with 'the mother passing the child-bearing age' as also with 'the father has lost the capacity for enjoyment.'—(*Vyavahāramayūkha*, p. 95.)

259. मनु 9. 185.] न भ्रातरो न पितरः पुत्रा रिक्थहराः पितुः ।

Sons alone shall inherit the father's property, not brothers or fathers.—(*Manu*, 9. 185.) [Quoted in *Mitākṣarā*, p. 706; *Vivādaratnākara*, p. 552; *Parāsharamādhava*, p. 349.]

NOTES

'*Sons,*'—*i.e.*, the 'legitimate' and the rest,—all except the son begotten by the twice-born on a *Shūdra* woman.—(*Sarvajñanārāyaṇa.*)

Neither uterine brothers nor brothers, but only sons,—*i.e.*, the 'Soil-born' and the rest, in the absence of the 'legitimate' son, which last is not meant here, having been already spoken of as the 'sole inheritor' under 9. 163.—(*Kullūka.*)

The legitimate and the other sons alone are to inherit a man's property.—(*Rāghavānanda.*)

All the 'substitutes' of the 'son' are entitled to inheritance; as for the legitimate son, the fact of his being the 'sole inheritor' has been already declared under 9. 163.—(*Mitākṣarā*, p. 706.)

Here Manu has declared the 'title to inheritance' of 'sons' besides the 'legitimate.'—(*Parāsharamādhava*, p. 349.)

260. नारद] कुटुम्बार्थेषु चोद्युक्तः [*v.l.*, (*a*) चेद्युक्तः (*b*) यद्युक्तः] तत्कार्यं कुरुते तु यः ।
स भ्रातृभिर्बृंहणीयो ग्रासाच्छादनवाहनैः ॥

If a brother, interesting himself in the business of the household, works for it,—he should have his share in the property added to by the brothers by the presenting of fodder,

food and conveyances.—(*Nārada.*) [Quoted in *Aparārka*, p. 720 ; *Vivādaratnākara*, p. 484 ; *Vivādachintāmaṇi*, p. 202 ; *Smṛtichandrikā*, p. 618 ; *Vīramitrodaya*, p. 572 ; *Smṛtitattva* II, p. 170 ; *Vibhāgasāra*, 4. 1-2 ; 4. 1—7.]

NOTES

Among the several brothers, if there is anyone who, by his special efforts looks after the household affairs and augments the common property,—while as his share he receives only what everyone else receives,—it behoves the other coparceners to repay him for his labours by giving him additional presents in the shape of grains, clothes, horses and other things.—(*Vivādachintāmaṇi*, pp. 202-203.)

In accordance with the maxim, 'more work, greater rewards,' the brother spoken of should have his share added to by his brothers, by the presenting of additional grains and other things.—(*Smṛtichandrikā*, pp. 617-618.)

The meaning is that he should receive something.—(*Vibhāgasāra*, 4. 1—3.) —If one of the coparceners is engaged in the maintenance of the family, his business shall be looked after by the other coparceners who will supply him with food and other things, according to his share in the property.—(*Ibid.*, 4. 1—7.)

261. कात्यायन] गृहोपस्करवाह्याश्च दोह्याभरणकर्मिणः ।
दृश्यमाना विभज्यन्ते, कोशं गूढेऽब्रवीन्मनुः ॥

Of household utensils, beasts of burden, milch cattle and slaves,—those that are perceptible shall be divided ; in regard to what may be concealed, Manu has declared recourse to the '*Jar*-ordeal.'—(*Kātyāyana.*) [Quoted in *Parāsharamādhava*, p. 376.]

NOTES

'*Kosha*'—This particular ordeal is mentioned, with a view to exclude the other ordeals.—(*Parāsharamādhava*, p. 376.)

262. बृहस्पति 25. 14.] समवेतैस्तु यत् प्राप्तं सर्वे तत्र समांशिनः ।

What has been acquired conjointly—in that all are equal sharers.—(*Bṛhaspati*, 25. 14.)

NOTES

See I, 58 and Chapter V, Section 19.

263. व्यास] साधारणं समाश्रित्य यत् किंचिद्वाहनादिकम् ।
शौर्यादिनाऽऽप्नोति धनं भ्रातरस्तत्र भागिनः ।
तस्य भागद्वयं देयं शेषास्तु समभागिनः ॥

If any property, such as conveyance and the like, has been acquired by a man by his own bravery or such special efforts,—with the help of the joint property,—his brothers shall receive equal shares in that property; the acquirer having taken two shares, the rest shall be divided equally among the others.—(*Vyāsa.*)

264. याज्ञवल्क्य 2. 120.] सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः ।
अनेकपितृकाणां तु पितृतो भागकल्पना ॥

In what accrues to the joint property [or in what has arisen out of the joint property], the division shall be equal.—(*Yājñavalkya*, 2. 120.)

NOTES

See I, 51; and II, 9.

265. याज्ञवल्क्य 2. 122.] (A) विभक्तेषु सुतो जातः सवर्णायां विभागभाक् ।
[*v.l.*, विभक्तेऽपि सवर्णायाः पुत्रो जातो विभागभाक्]।
(B) दृश्याद्वा तद्विभागः स्यात् आयव्ययविशोधितात् ॥

(A) If after partition a son is born of a wife of the same caste, this son shall receive a share (of the father);—(B) or (in cases where there is no 'father's share) he shall receive a share out of whatever may be found (with the brothers), *after deducting from it the income and the expenses incurred*—[*according to Vishvarūpa and Aparārka*]—or (B) (In cases where the partition has taken place after the father's death, and a posthumous son is born after the partition) this latter shall receive his share out of what may be found with the brothers, *account being taken of the income accrued and expenses incurred* [*according to Mitākṣarā*].—(*Yājñavalkya*, 2. 122.) [Quoted in *Madanapārijāta*, p. 656; *Parāsharamādhava*, p. 340; *Vīramitrodaya*, pp. 589 and 591.]

NOTES

(A) In a case where the sons have divided the property before the mother has passed the child-bearing age,—and a son is born after the division,—this latter son also is entitled to the property; and this could be so only if the 'ownership' of the new-born son were there already; otherwise, if 'ownership' were created by partition, then the new-born son could not have any

right to the property at all. This son is to have the father's share.—(B) *In cases where there is no 'father's property'* (the father not having taken any share for himself when the partition was made), the new-born son shall receive a share out of such property of the brothers as may be 'found'; but with this difference that what may have been earned by those brothers should be excluded; as also what may have been spent out of the property. That is to say, the other brothers shall divide equally with the newly-born brother the property that they had inherited, excluding the said 'income' and 'expenditure.'—(*Vishvarūpa.*)

(A) After the sons have divided the property, if another son is born of a wife of the same caste, he becomes entitled to the father's share.—(B) *In case there is no 'father's share,'* whatever land or other property that had been partitioned may be 'found' shall be shared with the new-born brother, the income accruing to it and the expenditure incurred from it being excluded.—(*Aparārka.*)

(A) After the sons have been divided, if another son is born of a wife of the same caste, that son is entitled to the share of his parents, *i.e.*, after the death of the parents he receives their share in the property; but the mother's share goes to him only if there are no daughters.—If the son is born of a wife of a different caste, then he receives only his own (statutory) share out of the father's property; of the mother's property he takes the whole [but 'only if there are no daughters or daughters' sons'—*Subodhinī*; 'if there are no daughters of the same caste as the father.'—[*Bālambhaṭṭī*]. This is what has been asserted by Manu: '*Ūrdhvam vibhāgāt jātastu, etc.*' (9. 216).—Whatever may have been acquired by the father after the partition goes to the new-born son.—(B) If the partition among the brothers takes place immediately *after the father's death*,—and after the partition another brother is born of the mother in whom signs of pregnancy had not been discerned at the time of partition (which therefore made no provision for the unborn child),—this brother receives a share out of property that is '*dṛshya*'—found with, inherited by, the brothers,—an account being taken of the 'income and expenditure,' *i.e.*, the daily or monthly or yearly income that may have accrued to the property during the interval (*mesne* profits), as also the expenses incurred out of the property for clearing the father's debts,—an account being taken of both these items, whatever property remains, out of that, a share shall be given to the new-born brother. That is to say, the brothers shall *add* to the property whatever income may have accrued (since the partition) to their respective shares,—and pay off the father's debts, after this, out of what remains to them, each brother shall give a little out of his own share, and thereby make his share equal to what remains to each of themselves.—This same rule applies to the case of a son born to a childless brother after partition, of a wife in whom signs of pregnancy had not been discerned at the time of partition. In cases where signs of pregnancy are already discernible at the time of partition, the partition shall be postponed till the birth of the child; as declared by Vasiṣṭha—'*Atha bhrātṛinām dāyabhāgaḥ, etc.*'—(*Mitākṣarā.*) [On this the *Bālambhaṭṭī* has the following *notes*: Some digest-writers have explained the second line (B) as setting forth an optional alternative to what has been said in the first line; others again have construed the two lines together

(as in *Vishvarūpa* and *Aparārka**). Neither of these explanations is right; that is why the *Mitākṣarā* has taken the two lines entirely separately—the first line pertaining to cases where the partition has been done *during the father's lifetime* and the new son has been born after the partition, and the second line to cases where the partition has been done *after the father's death* and the son born after the partition.—'*Income*' stands for the profits that each brother may have made after the partition, over his share of the property, by means of agriculture and other means; and 'expenditure' for the payment of such debts as the father had incurred in the maintaining of the family. A further explanation has been added with a view to preclude the meaning that the 'income' and the 'expenditure' are to be excluded from the property to be shared by the new-born brother.—Each brother is to give out of his share what may be proportionate to his share at the time.—The sense is as follows:—Though the father's property had been partitioned, yet (by reason of the birth of the new brother) it should be treated as *not-partitioned*; because the child in the womb, by virtue of being his father's child, was as much entitled to a share in the property as the other sons; consequently, if it was in the womb at the time of the father's death and was born subsequently, it is entitled to a share in the father's property and in the profits accruing to that property. If the child is a male one, its share shall be equal to that of the other sons; if it is female, it shall receive a quarter of the son's share.]—(*Mitākṣarā* and *Bālambhaṭṭi*.)

(A) If a son is born, after the sons have been divided, 'he shall receive a share,' *i.e.*, a proper share in the property inherited by the brothers—deducting from it the accretions and the expenses that may have taken place (during the interval).—(B) In case the son born after partition turn out to be worthless, he shall receive a share only out of the 'visible' part of the property,—*i.e.*, the cow, the buffalo and other cattle,—after the accretions and losses have been deducted from it.—All this refers to a case where the subsequently-born son was in the mother's womb at the time of the partition; in cases where the conception of the child has taken place after partition (and he was not in the womb at the time of the partition), what should be done has been laid down by Manu in the text—'*Ūrdhvaṁ vibhāgājjātastu, etc.*,' and by Bṛhaspati—'*Pitrā saha vibhaktā ye, etc.*,' and '*Putraiḥ saha vibhaktena, etc.*'—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

(B) In the compound '*tadvibhāgaḥ*,' the pronoun '*tat*' stands for the son born after partition;—'*vā*' means '*eva*'; his share shall come out of that only which is '*dṛshya*,' 'perceptible,'—and which is '*āyavyayavishodhita*.'—'*Āya*' stands for the profit that has accrued to the share of each brother through each man's agricultural and other operations; '*vyaya*' for such necessary items of expenditure as the payment of the father's debts, the maintenance of the household and like.—Thus the meaning is that the profits shall be added to, and the expenditure deducted from, the property inherited by the brothers, and then each brother shall give, out of each share, a proportionate part, in such a way as to provide for the new-born brother a share equal to that

* There is a third explanation—for which see *Vīramitrodaya-Ṭīkā* on *Yājñavalkya* below.

of each of them.—In cases where, in the mother or the sister-in-law, signs of pregnancy are perceptible, the partition should be done after her delivery.—(*Madanapārijāta*, p. 656)

(A) The first line lays down the method of apportioning the share of the son that may be born after partition. The meaning is as follows :—After the sons have been divided, if a son is born of a wife of the same caste, he receives the share of the parents ; the mother's share he shall receive only if she has no daughters. If the son born after partition is from a wife of a different caste, he receives only his own share out of the father's property (not the whole) ; but of the mother's property he receives the whole.—(B) The second line lays down the method of assigning the share of the son that is born after the partition which has taken place after the father's death.—'*Dṛshyāt*,' inherited by the brothers. The meaning of this is as follows :—On the death of the father, after the brothers have divided the property among themselves, if a son is born of the mother in whom signs of pregnancy had not been discernible at the time of partition, his share shall consist of what the brothers give him out of the property inherited by themselves, as determined after accounting for the accretions and deductions (during the interval),—such share being equal to their own individual share.—This same rule applies also to the case of a posthumous son being born of the sister-in-law in whom signs of pregnancy had not been discerned at the time of partition.—In cases where such signs are clearly discernible, the partition should be postponed till the child is born.—(*Parāsharamādhava*, pp. 339-341.)

Yājñavalkya lays down the method of apportioning the share of the son born after partition. When the sons have been divided either by their father's or their own wish, during the lifetime of the parents,—if another son is born to the father from a wife of the same caste as himself, that son is entitled to a share ;—'*vibhāga*' is *share*, of the parents, and this is received by the said son, *i.e.*, after the death of the parents, their share in the property is received by the said son,—but the mother's share goes to him only if there are no daughters.—The qualification '*of the same caste*' implies that if the son is born of a wife of a different caste, he receives only his own share out of the father's property, but of the mother's property, he receives the whole, provided there is no daughter.—(B) In the second line what Yājñavalkya means to say is that—in cases where, *after the father's death*, the father's property has been divided by the sons among themselves,—and after that a son is born to a wife of their father in whom signs of pregnancy were not discernible at the time of partition,—each of the former sons should give—out of the property inherited by them as computed in accordance with the income and expenditure (since partition)—to that new-born son enough to make his share equal to their own.—'*Dṛshyāt*'—inherited by the brothers.—'*Āya*,' the daily, monthly and yearly income that accrued to the property ;—'*vyaya*,' expenditure incurred in the payment of the father's debts and the marrying of the sisters ; the fulfilment of these two liabilities being a duty that devolves upon all the sons ; this 'expenditure' meant here cannot mean the expenses incurred by the brothers on their own account, as such expenditure can have no bearing on the point at issue ; out of the father's property which has been '*vishodhita*,' fairly computed, in view of the said income and expenditure, the son born after partition is to receive a share

equal to the share of each of the other brothers. What is meant is that the profits that may have accrued to the share of each of the brothers shall be added to it,—the amount spent over the necessary liabilities shall be deducted from it,—and out of the property thus computed, each brother shall give out of his share to the new-born brother, enough to make his share equal to their own.—The particle '*vā*' in the second line indicates that this line puts forward a second option; but an option only in the sense explained above.—*Halāyudha* has explained '*dṛshya*' as such property as is visible, and not what is *hidden* and has explained that the second line pertains to cases where the son born after partition is possessed of qualifications that are inferior to those possessed by the other brothers.—But this view is not correct.—(*Vīramitrodaya*, pp. 589-592.)

266. अर्थशास्त्र II, p. 31.] पितृद्रव्यात् अविभक्तोपगतानां पुत्राः पौत्रा वा
आचतुर्थात्—इत्यंशभाजः।

In the father's property, the sons and grandsons up to the fourth degree of the members of the joint property are sharers.—(*Arthashāstra*, II, p. 31.)

267. कात्यायन] धर्मार्थं प्रीतिदत्तं च यद्दयं स्वेन योजितम्।
तद् दृश्यमानं विभजेत् न दाप्यं पैतृकाद् धनात्॥

A gift for religious purposes, a gift promised as a token of love, and the debt that may have been incurred by the father himself (and specially mentioned to the sons as one that must be cleared),—*all this, as also whatever property may be found, the sons shall divide among themselves; there is nothing else that should be paid out of the paternal property.* [or, according to *Aparārka*, *all this, when found out, shall be divided by the sons among themselves; and not that all this shall be paid out of the father's property and then alone may the property be divided.*]—(*Kātyāyana*). [Quoted in *Aparārka*, p. 723; *Vyavahāramayūkha*, p. 123.]

NOTES

(*a*) The gift that was determined upon as to be made for religious purposes,—(*b*) the gift that was promised as a loving present,—(*c*) the debt that had been specially mentioned to one as one that must be cleared,—all this on being discovered should be divided (among the sons, each one of them repaying his share);—and *not* that the father's property shall be divided among the sons after the debts have been defrayed out of it.—(*Aparārka*, p. 723.)

What has been promised as a religious gift, what has been promised as a loving gift and the debt incurred by the father himself,—all this debt shall the

sons divide among themselves, as also the property that may be found ; apart from these debts there is nothing that should be paid out of the paternal property.—(*Vyavahāramayūkha*, p. 123.)

268. गौतम] अविद्याः समं विभजेरन् (स्वयमर्जितम्)

The illiterate ones shall divide the self-acquired property equally.—(*Gautama.*) [Quoted in *Virādachintāmaṇi*, p. 214.]

269. मनु 9. 192.] जनन्यां संस्थितायां तु समं सर्वे सहोदराः ।
भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः ॥

When the mother has died, all the uterine brothers and uterine sisters shall divide the mother's property equally. (*Manu*, 9. 192.) [Quoted in *Vivādachintāmaṇi*, p. 194; *Dāyabhāga*, p. 58 ; *Vivādaratnākara*, p. 515 ; *Vibhāgasāra*, 11. 1–10 ; *Dāyanirṇaya*, 23. 2–4.]

NOTES

Section IV, 39.

'*Samam*,' equally, without any 'preferential share' for the eldest.—'*Mātṛkam*,' mother's property, other than her '*Strīdhana*.'—'*Sisters*'—those that have no sons.—'*Sanābhayaḥ*,' uterine.—Some people hold that *brothers* also share in the '*Strīdhana*' according to the text of Bṛhaspati, which says —'*Strīdhanam syādapatyānām, etc.*,' which lays down that the *Strīdhana* shall be divided equally among the brothers and unmarried daughters, the married daughters are simply to be honoured with some gift. This is also the sense of all such texts as '*Strīdhanam duhitṛgāmi*.'—(*Sarvajñanārāyaṇa.*)

When the mother has died, the uterine brothers and such uterine sisters as are unmarried shall divide the mother's property equally among themselves ; the married sisters receiving some honorific present in keeping with the property. This is what has been declared by Bṛhaspati—'*Strīdhanam syādapatyānām, etc.*' As regards the married sisters, each of the brothers shall give to her the fourth part of his share of the mother's property, just as they give to the unmarried sisters out of the father's property.—(*Kullūka.*)

This text lays down what is to be done in cases where the mother dies before partition.—'*Sanābhayaḥ*'—born of the same womb.—As regards the unmarried daughters there is this difference that out of the mother's property their share shall be equal to that of the sons, but in the father's property their share shall be only the fourth part of the share of the sons. This is what has been declared by *Bṛhaspati* : '*Strīdhanam syādapatyānām, etc.*' (*Rāghavānanda.*)

The partition of the father's property having been described, the present text describes the partition of the mother's property.—'*Sanābhayaḥ*,' uterine.—'*Bhajeran*,' divide among themselves.—(*Nandana.*)

'*Bhaginyaḥ sanābhayaḥ*'—the sisters born of the same mother.—(*Rāmachandra.*)

Here Manu has asserted the joint title of sons and daughters.—(*Vivādachintāmaṇi*, p. 194.)

'*Samam*,' equally, without any 'preferential shares.'—The 'sisters,' meant here are those that are unmarried or poor, as is clear from Bṛhaspati's text ('*Strīdhanam syāt, etc.*').—'*Sanābhayaḥ*,' uterine.—(*Vivādaratnākara*, pp. 515-516.)

The 'sisters' meant here are such uterine ones as are unmarried.—(*Vibhāgasāra*, 11. 1—11.)

'*Sanābhayaḥ*,' uterine.—The particle '*cha*' implies that the rights of the brothers and sisters are equal. But this can apply to only property other than the mother's *dowry*, which goes entirely to the sisters or their sons.—(*Dāyanirṇaya*, 23. 2—4.)

270. देवल] अविभक्तविभक्तानां कुल्यानां वसतां सह ।
भूयो दायविभागः स्यादाचतुर्थादिति स्थितिः ॥
तावत्कुल्याः सपिण्डाः स्युः पिण्डभेदस्त्वनन्तरम् ।
सममिच्छन्ति पिण्डानां दायार्थस्य विभाजनम् ॥

(A) Among such *Sakulyas* as are undivided, or as are living together after being divided,—there shall be a partition of the property, up to the fourth generation; (B) up to that degree would the *Sakulyas* be *Sapiṇḍas*; beyond that there would be difference of the *Piṇḍa*; they hold that the partition of property and the *Piṇḍa* go hand-in-hand.—(*Devala.*) [Quoted in *Aparārka*, p. 727; *Vivādaratnākara*, p. 482; *Smṛtichandrikā*, p. 648; *Vibhāgasāra*, 4. 2—4; *Dāyanirṇaya*, 2. 2—8.]

NOTES

(A) '*Up to the fourth generation*,'—*i.e.*, among brothers, their sons and the sons of these sons; it ceases at the fourth degree,—*i.e.*, with the great-grandsons of the brothers.—(B) This refers to cases where the property is not in the possession of the party seeking partition, but in that of the party on the spot.—(*Vivādaratnākara*, pp. 482-483.)

'Right to the partition of the property' and 'the liability to offer the funeral cake' have been held by Manu and others to extend up to the fourth generation—such is the meaning of the text (fourth line). The meaning of the first three lines is as follows:—Among the *Sakulyas* who are '*abhibhakta*,' with undivided property,—and who are '*vibhakta*,' *i.e.*, descended in different lines, and yet belong to one root—dynasty of the prime owner of the property—and have lived together '*bhūyaḥ*,' *i.e.*, for a long time,—the right to inherit property shall extend up to the fourth generation, *i.e.*, up to the great-grandson of the prime owner of the property.—(*Smṛtichandrikā*, p. 648.)

'*Up to the fourth generation*,'—*i.e.*, extending down to the *son*, the *grandson* and the *great-grandson*. The meaning is that when there is re-partition among members of a family not divided,- or among those who have become joint after partition,—it shall extend to the brother, the brother's son and the brother's grandson.—(*Dāyanirṇaya*, 2. 2—9.)

271. पैठीनसि] पैतृके विभज्यमाने दायाद्ये भ्रातृणां समो विभागः ।

When there is paternal property to be divided, the division should be equal among the brothers.—(*Paiṭhīnasi.*) [Quoted in *Smṛtichandrikā*, p. 614 ; *Dāyabhāga*, p. 65 ; *Dāyanirṇaya*, 19. 2—9.]

NOTES

'*Dāyādya*'—heritable property.—(*Smṛtichandrikā*, p. 614.)

272. हारीत] समेनैव [*v.l.*, समानो] मृते रिक्थविभागः ।

On the death (of the father), the division of property is to be equal.—(*Hārīta.*) [Quoted in *Smṛtichandrikā*, p. 614 ; *Vyavahāramayūkha*, p. 100.]

NOTES

'*Mṛte*'—on the death,—of the father ;—the '*division*' that is made by the brothers should be made in 'equal' shares.—(*Smṛtichandrikā*, p. 614.)

This lays down equal division of property on the father's death.—(*Vyavahāramayūkha*, p. 100.)

273. बृहस्पति] तदभावे तु तनयाः समांशाः परिकीर्तिताः

On the death of the father, the children have been declared to be equal sharers.—(*Bṛhaspati.*) [Quoted in *Aparārka*, p. 728 ; *Smṛtichandrikā*, p. 650.)

274. उशनाः] समस्तेष्वेकजातानां विभागस्तु विधीयते ।

Division among those born of one and the same person has been declared to be equal.—(*Ushana.*) [Quoted in *Dāyabhāga*, p. 65.]

NOTES

On the father's death, there is an equal division of property.—(*Dāyabhāga*, p. 65.)

275. व्यास] समानजातिसंख्या ये जातास्त्वेकेन सूनवः ।
विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते ॥

In cases where there are several sons born to one man from different mothers,—the sons of the different mothers being of the same caste and the same in number,—the partition commended is that in reference to the mothers.—(*Vyāsa.*)

NOTES

Section II, 39.

276. बृहस्पति 25. 15-16] यद्येकजाता बहवः समाना जातिसंख्यया ।
सापत्नास्तैर्विभक्तव्यं मातृभागेन धर्मतः ॥
सवर्णा भिन्नसंख्या ये पुम्भागस्तेषु शस्यते ॥

When there are many sons sprung from one father, equal in caste and number, but born of different mothers, the legal division of the property may be effected by adjusting the shares according to the mothers.—When there are several brothers, equal in caste, but varying in number, a division according to males is commended.—(*Bṛhaspati*, 25. 15—16.) [Quoted in *Vivādaratnākara*, p. 475; *Parāsharamādhava*, p. 342; *Dāyabhāga*, p. 60; *Vīramitrodaya*, p. 576; *Vyavahāra-mayūkha*, p. 102.]

NOTES

Section II, 39.

277. वसिष्ठ] अथ भ्रातृणां दायभागो याश्चानपत्याः स्त्रियस्तासां चापुत्रलाभात् ।

In cases of partition among brothers, if there are any childless women (who are pregnant) *they shall receive a share till they get a son* [or the partition shall be postponed till they get a son].—(*Vasiṣṭha*). [Quoted in *Aparārka*, p. 728; *Mitākṣarā*, p. 655; *Madanapārijāta*, p. 656; *Vivādaratnākara*, p. 488; *Vivādachintāmaṇi*, p. 204; *Parāsharamādhava*, p. 341; *Vīramitrodaya*, p. 589; *Vibhāgasāra*, 4. 2—6.]

NOTES

Section II, 302.

Such women as have had no child, but had conceived and become widowed before delivery, are also entitled to share in the inheritance, until the son is born ; if a son is not born, the share reverts (to the coparceners) ; such is the implication of the phrase '*āputralābhāt.*'—(*Aparārka*, p. 728.)

In the case of *women* [*brother's wives*, says the *Bālambhaṭṭi*] in whom signs of pregnancy are quite discernible, the partition shall be postponed till delivery.—(*Mitākṣarā*, pp. 655-656.)

If there are women in whom the signs of pregnancy are clearly discernible, the division of the property shall be made in expectation of the delivery.—(*Madanapārijāta*, p. 656.)

'*Striyaḥ*,' 'women,' stands here for the brother's wives.—The meaning is that if any of the brothers' wives are supposed to be carrying, a share shall be assigned to these also ; if no son is born, the share shall revert to the brothers and the women shall receive maintenance only.—(*Vivādaratnākara*, p. 483.)

'*Striyaḥ*,' wives of the brothers.—The meaning is that if a widowed sister-in-law is supposed to be carrying, a share shall be assigned to her ; on delivery, this share shall go to her son ; if no son is born, that share shall be taken by her brother-in-law and the other coparceners.—(*Vivādachintāmaṇi*, p. 204.)

If there are women in whom the signs of pregnancy are clearly discernible, the division of property shall take place in expectation of the delivery.—(*Parāsharamādhava*, p. 341.)

If any of the father's or brother's wives evince clear signs of pregnancy, then the division of property should be postponed till the delivery.—The phrase '*āputralābhāt*' indicates that there is to be postponement in case the signs of pregnancy are clearly discernible, not if they are not discernible.—(*Vīramitrodaya*, p. 589.)

If there is no son, the pregnant widow shall receive a share ; if she does not give birth to a son, that share shall be resumed by the widow's husband's brothers and other coparceners.—(*Vibhāgasāra*, 4. 2—6.)

278. मनु 9. 205.] अविद्यानां तु सर्वेषामीहातश्चेद् धनं भवेत् ।
समस्तत्र विभागः स्यादपित्र्य इति धारणा ॥

If all the brothers are unlearned, and a property is acquired by their labour,—in that case, the division shall be equal ; the property being not ancestral—such is the settled rule.—(*Manu*, 9. 205) [Quoted in *Aparārka*, p. 727 ; *Vivādachintāmaṇi*, p. 214.]

NOTES

'*Unlearned*'—*i.e.*, devoted to agriculture, trade, service and so forth.—In this case, as a rule no attention is to be paid to the larger or smaller amount of property acquired by the brothers. But even so, if any one of them acquires

a very large property, that will not be divided equally. If the difference in the properties acquired by them is small, the shares shall be equal.—This text is in reality meant to be prohibitive of the 'preferential share' of the eldest brother.—'*The property being not ancestral*';—this clearly indicates that this same rule applies also to the case of the property of a childless person.—(*Medhātithi.*)

If all are '*unlearned,*'—and '*īhātaḥ,*' by going about here and there,—without any injury to the ancestral property—have acquired wealth,—then even in the wealth acquired by the youngest brother, the eldest has an equal share. That is to say, if all the brothers are illiterate and have acquired wealth, by means of the ancestral property, through trade and other ways,—then in the division of the wealth, the eldest is not to be given a 'preferential share.'—(*Sarvajñanārāyaṇa.*)

If all the brothers acquire wealth by agriculture, trade and other means,—then in that wealth, as apart from the ancestral property, which is their self-acquired property,—the division shall be equal and no 'preferential share' shall be given to the eldest brother out of what is not ancestral. —(*Kullūka.*)

Even though the brothers be devoid of learning, if they have acquired any wealth by efforts of their own, the division shall be equal.—'*Apitryē*' the property which is apart from the ancestral property, in regard to which latter a 'preferential share' has been sanctioned.—'*Dhāraṇā,*'— settled rule of the scriptures. What is meant is that even such brothers as are illiterate and have not put forth any effort towards the acquiring of wealth, are to share in the said wealth.—(*Rāghavānanda.*)

'*Ihātaḥ,*' by such exertion as is involved in agriculture and other operations.—If every one has worked according to his capacity, every one is entitled to share in the wealth acquired.—'*Apitryē,*' the division which is not made by the fathers; in divisions made by the father, *unequal* division has been permitted; while in this case the division of the wealth is declared to be *equal.*—(*Nandana.*)

'*Ihā*'—Agriculture and the rest.—'*Equal,*' not unequal.—'*Apitryē*'—and hence there is no 'preferential share' in the shape of the 'twentieth part' and the like.—(*Vivādachintāmaṇi*, p. 214.)

279. वसिष्ठ] येन चैषां स्वयमुपार्जितं स्यात् स द्व्यंशमेव लभेत् ।

Among these, the one who may have acquired the property by himself should receive two shares.—(*Vasiṣṭha.*) [Quoted in *Madanapārijāta*, p. 647.]

NOTES

'*Among these,*'—*i.e.*, among the father, brothers and other coparceners.—(*Madanapārijāta*, p. 647.)

280. गौतम (ऐतरेय ब्राह्मण 2. 1—7.)] यो वै भागिनं भागान्नुदते चयते एवैनं सः । स यदि चैनं न चयतेऽथ पुत्रमथ पौत्रं चयते ।

If a man deprives a co-sharer of his share, this latter destroys him ; if he does not destroy him, he destroys his son or grandson.—(*Gautama*, quoting *Aitareya Brāhmaṇa*, 2. 1. 7.) [Quoted in *Vyavahāramayūkha*, pp. 131-132 ; *Mitākṣarā*, p. 673.]

NOTES

If a man deprives of the share of a man who is entitled to it—*i.e.*, if he excludes him from it and does not give it to him,—then, the man, thus deprived of his share '*destroys*,'—*i.e.*, makes guilty—'*him*' who has so deprived him ;—if he does not destroy the man himself, he destroys his son and grandson.—Here it is pointed out without reference to the eldest son or any particular brother—that misappropriation of common property is a serious offence.—(*Mitākṣarā*, p. 673.)

281. बृहस्पति] येनांशो यादृशो भुक्तस्तस्य तन्न विचालयेत् ।

If a certain portion has been in the possession of one, that shall not be disturbed.—(*Bṛhaspati.*)

NOTES

See II, 12 and 52.

282. मनु 9. 191 ; नारद] द्वौ तु यौ विवदेयातां द्वाभ्यां जातौ स्त्रिया धने ।
तयोर्यद् यस्य पित्र्यं स्यात् तत् स गृह्णीत नेतरः ॥

If two sons born of two men contend for the property in the mother's possession, each shall take, to the exclusion of the other, what belonged to his own father.—(*Manu*, 9. 191.)

NOTES

See II, 172 and 213.

283. बृहस्पति] (A) अर्थं लेख्यं गृहं क्षेत्रं यस्य पैतामहं भवेत् ।
चिरकालप्रोषितो वा भागभागागतस्तु सः ॥
(B) गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः ।
तद्वंशस्यागतस्यांशः प्रदातव्यो न संशयः ॥
(C) तृतीयः पञ्चमश्चैव सप्तमश्चापि यो भवेत् ।
जन्मनामपरिज्ञाने लभेतांशं क्रमागतम् ॥

(A) If a man, having lived abroad for a long time, comes home, he shall receive his share of the debt, the documents, the house, and the land that may have belonged to his grandfather.—(B) A man having left his ancestral home, and gone over to another country,—if his descendant comes back to the ancestral place, he should certainly receive his share in the property.—(C) The person who is the third, fifth or seventh in descent (from the original owner) should receive his share in the ancestral property if his birth and family-name are known.—(*Bṛhaspati.*)

NOTES

Section II. 58 and V, 6

284. अर्थशास्त्र II, p. 37.] नानास्त्रीपुरुषाणां तु संस्कृतासंस्कृतयोः कन्याकृतक्रिययोरभावे च एकस्याः पुत्रयोः यमयोर्वा पूर्वजन्मना ज्येष्ठभावः ।

In cases where there are several sons of a man born of several wives,—if there is no distinction among the wives, on account of one being married and the other not married, or of one being married by the Brāhma or some other commendable form of marriage, or another by one of the reprehensible forms,—seniority among the sons of the same wife, or between twins, shall be determined by previous birth.—(*Arthashāstra* II, p. 37.)

285. मनु 9. 218.] ऋणे धने च सर्वस्मिन् प्रविभक्ते यथाविधि ।
पश्चाद् दृश्येत यत्किंचित् तत्सर्वं समतां नयेत् ॥

After all the assets and liabilities have been duly distributed, if something be discovered afterwards,—all this should be divided equally.—(*Manu*, 9. 218.) [Quoted in *Vivādaratnākara*, p. 525 ; *Smṛtichandrikā*, p. 713 ; *Parāsharamādhava*, p. 382 ; *Dāyabhāga*, p. 221 ; *Vīramitrodaya*, p. 706.]

NOTES

After the property, more or less, has been divided, in ignorance,—if something is discovered, it shall be equally divided ; and in what is discovered after the division, there shall be no 'preferential share' for the eldest brother.—(*Medhātithi.*)

'*If one thing is discovered,*' which had been concealed,—any liability or asset,—it shall be equally divided; the concealer shall not be deprived of his share, as a penalty for his misbehaviour.—The mention of '*ṛṇa*,' 'debt,' 'liabilities,' here shows that at the time of the partition of wealth,—or even when there is no wealth to divide,—the debt shall be divided. The implication is that in this supplementary partition there shall be no preferential share for the eldest brother or others.—(*Sarvajñanārāyaṇa.*)

When all the '*liabilities*'—debts left by the father—and '*assets*'—property left by the father—have been divided according to law,—if some paternal property or debt, which was unknown at the time of partition, is discovered,—all that shall be divided in equal shares, and no preferential share shall be given to the eldest son, either in the assets or in the liabilities.—(*Kullūka.*)

After all the assets and liabilities have been divided,—if some debt is discovered, it shall be cleared, *i.e.*, it shall be realised from all the creditors and divided equally. The debt does not devolve upon the daughter, though property does devolve upon her. Hence it is that we have Yājñavalkya's text—'*Vibhajeratn sutāḥ pitroḥ, etc.*'—(*Rāghavānanda.*)

'*Something is discovered*'—anywhere.—(*Nandana.*)

All this shall be equalised.—(*Rāmachandra.*)

After all the debt and wealth that was found at the time of partition has been divided according to the law—that 'all the sons receive equal shares in the father's property, but the one who is endowed with learning and character deserves more,'—if at some future time, some debt—the creditor whereof had been abroad—or some property deposited with a person who had been abroad,—happen to be discovered on the return of these persons,—all this should be divided equally; that is, no larger share shall be given to the person endowed with learning and character.—The statement that 'the subsequently discovered debt should be equally divided' implies that the previously known debt is to be divided unequally, like the property.—(*Smṛtichandrikā*, pp. 713-714.)

'*Samatām nayet.*'—The meaning is that the allotment of shares in the subsequently discovered assets and liabilities—shall be *on the same lines* as the previous allotment; and the man who may have held back the property shall not have his share either reduced or cut off entirely. It does not mean that all the sharers shall receive equal shares in the property; as there would be no justification for the withholding of the 'preferential share' and other inequalities; also if such equal sharing were meant, then it would involve the absurdity of the Kṣattriya son receiving the same share as the Brāhmaṇa son.—(*Dāyabhāga*, p. 221.)

286. कात्यायन] ऋणं प्रीतिप्रदत्तं तु दत्त्वा शेषं विभाजयेत् ॥

After paying off the debt, and the loving gifts (promised) one shall divide the remnant.—(*Kātyāyana.*) [Quoted in *Parāsharamādhava*, p. 375; *Vyavahāramayūkha*, p. 122.]

NOTES

All kinds of property shall be divided only after the debts have been paid off. If there is not enough wealth to pay off the father's debts, they shall divide these debts also among themselves.—(*Parāsharamādhava*, p. 375.)

'*Prītipradattam*,' loving gifts that have been promised by the father.—(*Vyavahāramayūkha*, p. 122.)

287. नारद 16. 32.] यच्छिष्टं पितृदायेभ्यो दत्त्वार्णं पैतृकं ततः
कात्यायन] [*v.l.*, च यत्]।
भ्रातृभिस्तद्विभक्तव्यमृणी न स्यात् पिता यथा ॥
[*v.l.*, स्यादन्यथा पिता]॥

Out of what remains after the discharging of the debts to the father (by the performance of *Shrāddhas*), the brothers shall pay off the debts due by the father and then divide the balance among themselves ; so that the father may not remain a debtor.—(*Nārada*, 16. 32.) [Quoted in *Aparārka*, p. 722 ; *Smṛtichandrikā*, p. 616 ; *Smṛtitattva* II ; 169 ; *Vyavahāramayūkha*, p. 123.]

NOTES

Section I, 147.

'*Pitṛdāya*,' the first *Shrāddhas* : says Gautama—'They shall offer the first *Shrāddha* conjointly.'—(*Aparārka*, p. 722 ; also *Smṛtichandrikā*, p. 616.)

'*Pitṛdāyebhyaḥ*,' from what has been given away or promised by the father.—'*Ṛṇī na syāt, etc.*'—If they are unable to pay it at the time, they should admit the debt to the creditor and promise to pay it as soon as they are able to do so.—(*Smṛtitattva* II, p. 169.)

'*Pitṛdāya*' is what has been promised by the father.—(*Vyavahāramayūhka*, p. 123.)

II [3 (h)]

MISCELLANEOUS RULES REGARDING SONS' INHERITANCE

288. मनु 9. 216.] ऊर्ध्वं विभागाज्जातस्तु पित्र्यमेव धनं हरेत् ।
नारद 13. 43.] संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह ॥

If a son is born after partition, he shall receive the property of the father alone; or, if any other sons had been reunited, he shall share it with them.—(*Manu*, 9. 216; *Nārada*, 13. 43.) [Quoted in *Aparārka*, p. 729. *Mitākṣarā*, p. 651; *Madanapārijāta*, p. 653; *Vivādaratnākara*, p. 538; *Vivādachintāmaṇi*, p. 228; *Vivādachandra*, 20.1–8; *Smṛtichandrika*, p. 711; *Parāsharamādhava*, p. 340; *Dāyabhāga*, pp. 24, 130; *Vīramitrodaya*, pp. 590, 591; *Vyavahāramayūkha*, p. 104.]

NOTES

See II, 13 and 44.

After the partition has been made,—in which the father has taken two shares,—if a son happens to be born, he shall receive these two shares, during the father's lifetime,—if the father so wishes,—or after the death of the father; and his brothers shall not complain as to why he should have *two* shares. If however such is not the father's wish, then he shall be assigned by the others a share equal to their own.—In case sons of the father become reunited with the father after the partition has been made, then the father's share shall go to them; and the additional property accruing therefrom shall be assigned by them as the share of the other brothers. This property thus accrues to the son reunited with the father; and also after the father's death, he receives his share out of that same property, in accordance with what has been said in the text—'*Vibhaktāḥ saha, etc.*'—(Manu, 9. 216.)—As regards the sisters, they are entitled to a share until they have borne a child, as declared by Vasiṣṭha.—(*Medhātithi.*)

'*Of the father alone,*'—*i.e.*, the father's share This implies that at the partition, the father has to have a share for himself. If, after the partition, several sons are born, that same 'father's share' shall be divided among them.—'*Reunited*';—if some of the brothers are again united with the father, then, as their property will have become merged in the father's share, the father's property shall be divided by all these brothers among themselves.—(*Sarvajñanārāyaṇa.*)

In a case where, at the wish of the sons, the father has made a partition of the property during his lifetime,—if a son is born to him after the partition, he shall, after the death, receive the father's share of the property. If

the sons who had become separated from the father become reunited with the father and merge their property in the father's property,—then the aforesaid son shall share the property with these.—(*Kullūka.*)

After the property has been divided by the father among all the sons,—if another child is born after that partition,—what shall be done under such circumstances, is laid down here. '*Ūrdhvam,*' on the father's death;—'*pitryam,*' the share assigned to the father at the time of partition; this is left indefinite as in his own lifetime, there is no certainty as to what the wish of the father would be regarding his own share in the property.—Those that have become reunited with the father, with them the *father* shall share the property.—If at the time of the father's death, the mother was known to be with child, share is to be given to that child, even by those who had become separated,—even though there be no 'father's share.' In cases where there are doubts regarding the mother's pregnancy, the partition should be postponed till the time of delivery.—(*Rāghavānanda.*)

He shall receive only the father's property, and he shall not have any share in the divided property of his brothers. An exception to this rule is added in the second half of the verse. He may share the property equally with those brothers, who may have become reunited with the father.—(*Nandana.*)

Those who may have become reunited with the father,—with those the father shall share the property.—(*Rāmachandra.*)

One born after partition shall take only the father's property, not the property of the brothers. In the absence of the father and the brothers, one shall share the father's share with those who have become reunited with the father.—No significance attaches to the singular number in '*jātaḥ,*' '*a son born, etc.*'—(*Aparārka*, p. 729).

'*Pitryam*' should be explained as '*pitroḥ idam,*' 'belonging to the parents'; which would be in accordance with another Smṛti-text—'*Anīshaḥ pūrvajaḥ pitrorbhrātṛbhāgē vibhaktajaḥ,*' (See 292) which means that the son born *before* partition is not entitled to the share of the parents, and the son born *after* partition is not entitled to the share of the brothers.—(*Mitākṣara*, pp. 651-653.)

'*Pitryam*' is an *Ekashēṣa* compound; hence '*pitrya*' is *that which belongs to the parents.*—(*Madanapārijāta*, p. 655.)

After the sons have become separated from the father, if a son is born,—this son shall receive the entire share of the father after his death; during the father's lifetime, he shall receive only a part of the father's share. The particle '*eva*' implies that he shall receive nothing out of the shares of the separated brothers.—(*Vivādaratnākara*, p. 538.)

What the particle '*eva*' implies is that the son mentioned shall not receive anything out of the share of the brothers, in the manner that the son who was in the mother's womb (at the time of the father's death or at the time of partition) does;—he receives only the property that belongs to the father. In this also there is a peculiarity. If the son in question desires to take the father's share during the latter's lifetime,—and there also he desires to receive only a portion of it,—then the father's share shall be divided into two parts, one part being the father's and the other for the son. But if it is after the father's death, then the entire share of the father goes to the son born after the

partition. If the father has become reunited with his brother, or with his son, and then dies,—then the son born after partition receives the share of the father out of the joint property.—(*Vivādachintāmaṇi*, p. 228.)

Those born after partition are entitled to the father's share only ; and so long as any such is there, the other sons shall have no share in it. If however a separated son had become reunited with the father, then in that case the son born after partition shall share the father's share equally with that reunited son.—(*Vivādachandra*, 20. 1—8-9.)

'*Pitryam eva*,' 'of the father alone,' has to be construed with the second line also. Hence there is no inconsistency with what has been said before. This rule refers to the case where the father has died while living conjointly with the son born after partition.—(*Smṛtichandrikā*, p. 711.)

This means that if separated sons become reunited with the father, they are entitled to share the father's property with the son born after the previous partition.—(*Parāsharamādhava*, p. 340.)

The father has divided the sons, taking for himself the share ordained in the scriptures, and then dies while living apart from the sons ;—in this cases, the son that may have been born after the said partition shall receive the entire share of the father, as his own share. In a case where the father has died after being reunited with some of his sons, the son born after partition shall give shares in the father's share to these reunited sons.—(*Dāyabhāga*, p. 130.)

What is meant by this is that in cases where the father has made the partition during his lifetime, the son born after the partition,—if born of a wife of a different caste,—receives only that to which his caste entitles him, and not the entire share of the father.—'*Pitryam*' means 'the property of the parents' ; it is this that the said son shall take,—in accordance with the rule regarding sons of different castes.—The particle '*eva*' implies that his brothers are not to extract parts of their shares and thereby make up a share for him equal to their own —(*Viramitrodaya*, p. 590.)—If some of the sons, after separating from the father, have become reunited with him, then the father's share shall be shared with these, and the whole of it shall not be taken by the son born after partition.—(*Ibid.*, p. 591.)

If any son becomes reunited with the father, then the property shall be shared with him.—(*Vyavahāramayūkha*, p. 104.)

289. विष्णु 17. 3.] पितृविभक्ता विभागानन्तरमुत्पन्नस्य भागं दद्युः ।

Those who have separated from their father should give a share to the son born after the partition.—(*Viṣṇu*, 17. 3.) [Quoted in *Aparārka*, p. 730 ; *Vivādaratnākara*, p. 539 ; *Vivādachintāmaṇi*, p. 228 ; *Smṛtichandrikā*, p. 709 ; *Dāyabhāga*, p. 131 ; *Smṛtitattva*, p. 168 ; *Vyavahāramayūkha*, p. 105.]

NOTES

See II, 15.

[For notes from *Vivādaratnākara*, see under Yājñavalkya, 2. 123.]

The meaning of this text is the same as that of Yājñavalkya, 2. 123.—(*Vivādachintāmaṇi*, p. 228.)

This text refers to the son born after partition made during the lifetime of the father. The meaning of the text is as follows :—In a case where the sons have become separated from their father,—and after this partition another son is born of their mother in whom signs of pregnancy were not perceptible at the time of partition, the former sons shall give to him his share which, by reason of their ignorance of his existence (in the mother's womb), was included in their own.—The father need not give him the share that is included in the father's own share ; but he shall continue to live with the son born after partition, having received (on behalf of this latter son) the share given by the elder brothers ; because so long as this son is a minor, he has to be looked after. This is the reason why the text says '*those separated from the father* should give a share,'—and not '*the father and those separated from the father* should give a share.'—(*Smṛtichandrikā*, p. 709.)

If the land and other ancestral property also have been partitioned, then the new-born son shall receive his share of that property from his brothers.—(*Dāyabhāga*, p. 131.)

If, by chance, the ancestral property has been partitioned before the mother has passed the child-bearing age, then what is declared in the present text is to be done. This does not refer to the father's (self-acquired) property ; as in that case it would be inconsistent with Bṛhaspati's text (by which the father's share goes entirely to the new-born son.)—(*Vyavahāramayūkha*, p. 105.)

290. गौतम 28. 27.] विभक्तजः पित्र्यमेव ।

The son born after partition (receives) only the father's (share).—(*Gautama*, 28. 27.) [Quoted in *Dāyabhāga*, p. 130 ; *Vyavahāramayūkha*, p. 104.]

NOTES

'*Vibhaktaja,*'— son born after partition,' here meant is one whose *conception* has taken place after partition ;—the word being etymologically explained as '*vibhaktena janitaḥ,*' 'begotten by one who has been divided' ; and the act of 'begetting' can be none other than the *bringing about of conception.*—(*Dāyabhāga*, p. 136.)

This refers to the case of a son born after partition.—(*Vyavahāramayūkha*, p. 104.)

291. बृहस्पति 25. 19-20.] पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्जितम् ।
विभक्तजस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः ॥
यथा धने तथर्णेऽपि दानाधानक्रयेषु च ।
परस्परमनीशास्ते मुक्त्वाऽशौचोदकक्रियाः ॥

The self-acquired property of the father divided from his sons goes entirely to the son born after that partition; those born before have been declared to have no right over it.—In regard to property, as also to debts, gifts, pledges and purchases, they have no concern with each other, except in regard to impurity (due to death and birth) and water-libation.—(*Bṛhaspati*, 25. 19-20.) [Quoted in *Mitākṣarā*, p. 653; *Madanapārijāta*, p. 655; *Dāyabhāga*, p. 131; *Vivādaratnākara*, p. 539; *Vivādachintāmaṇi*, p. 229; *Smṛtichandrikā*, pp. 710-711; *Vyavahāramayūkha*, p. 104; *Vīramitrodaya*, p. 590; *Parāsharamādhava*, p. 340; *Smṛtitattva* II, p. 168; *Vibhāgasāra*, 13. 2. 2.]

NOTES

Whatever has been acquired by the father after partition,—all that goes to the son born after partition.—(*Mitākṣarā*, p. 653.)

The term '*sarva*' implies, that, even when the father has acquired a very large property, it shall go to the son born after partition.—The declaration that they are concerned with each other only 'in regard to impurity and water-libations' serves to preclude entirely any title to the property in question. This applies only to the father's self-acquired property.—(*Dāyabhāga*, p. 131.)

The final conclusion is that (*a*) if the son in question was in the womb at the time of partition, and is born after the partition,—then his share shall be made up out of their own shares by the brothers already divided, and (*b*) in other cases (*i.e.*, when the conception also of the son took place only after the partition), the son born after partition shall receive only the father's property.—(*Vivādachintāmaṇi*, p. 229.)

The term '*sarva*,' 'entirely,' is meant to preclude the notion that "inasmuch as the elder sons had received no share out of the property acquired by the father after partition, they should receive shares out of it."—The elder brothers and others would have no rights over each other's property, and they are like persons not related at all,—with this little difference that they *are* concerned with each other, in regard to impurities, water-libations and such things,—not in regard to property.—'*Ādhāna*,' is *ādhi*, pledge.—(*Smṛtichandrikā*, pp. 710-711.)

Unless the new-born son receives a share from the previously divided brothers, he shall not be liable to pay their debts.—(*Vyavahāramayūkha*, p. 104.)

The property that the father may have acquired after the partition,—that also goes only to the son born after partition.—(*Vīramitrodaya*, p. 590.)

The property acquired by the father after partition belongs to the son born after partition.—(*Parāsharamādhava*, p. 340.)

292. बृहस्पति 25. 17-18.] पित्रा सह विभक्ता ये सापत्ना वा सहोदराः ।
जघन्यजाश्च ये तेषां पितृभागहरास्तु ते ॥
अनीशः पूर्वजः पित्र्ये [*v.l.*, पित्रोः] भ्रातृ-
भागे विभक्तजः ॥

When step-brothers or uterine-brothers have become divided from the father, the sons born subsequently shall receive the father's share ;—the son born before (partition) has no right over the parents' share ; and the one born after partition has no right over the brother's share.—(*Bṛhaspati*, 25. 17-18.) [Quoted in *Mitākṣarā*, p. 652 ; *Aparārka*, p. 729 ; *Vivādaratnākara*, p. 538 ; *Vivādachintāmaṇi*, pp. 228, 248 ; *Smṛtichandrikā*, p. 710 ; *Vīramitrodaya*, pp. 590, 687 ; *Smṛtitattva* II, p. 168 ; *Vibhāgasāra*, 13. 1—11.]

NOTES

The meaning (of the third line) is that the son born before partition has no right over the property of the parents with whom the partition has been made ; and the son born after the partition has no right over the share of the brother.—(*Mitākṣarā*, p. 653.)

If the share of the previously-born sons happen to be large and that of the subsequently-born sons small,—consisting as the latter does of the father's share divide among them,—even then the latter are not to receive anything out of the share of the brothers previously divided.—(*Aparārka*, p. 729.)

'*Vibhāgajaḥ*,' born before partition ' *i.e.*, the one who has been divided (from the father) ; such a son '*has no right*'—over the father's share ; and the '*vibhaktajah*,' son born to the father after his separation from the elder son, 'has no right,' over the brother's share.—(*Vivādaratnākara*, p. 538.)

'Those born subsequently' receive only the father's share.—(*Vivādachintāmaṇi*, p. 229.)

The word '*pitṛbhāgaharāḥ*' means 'having a share only in the father's share.' This refers to those whose conception has taken place after the partition. The third line supplies the reason for the declaration that 'those subsequently born receive a share in the father's share only.'—'*Anīshaḥ*,' having no right. The phrase '*anīshaḥ pūrvajaḥ pitrye*' should be understood to mean 'because they have been divided from the father' ; and the phrase '*bhrātṛbhāge vibhaktajaḥ*' to mean 'because the property of the son born after partition did not enter into the share of the brothers.'—(*Smṛtichandrikā*, p. 710.)

'*Pūrvajaḥ*,' one born before partition,—who has already got his share out of the father's property,—is '*anīshaḥ*'—has no right over the share of the parents ;—the son born after partition also 'has no right' over the share of the brother. This line contains the reason for what has gone in the preceding two lines.—(*Vīramitrodaya*, pp. 590-591.)

'*Jaghanyajaḥ*'—Like the son born after partition, this son also receives only the father's share.—'*Anīshaḥ pūrvajaḥ*,'—*i.e.*, if he has been divided from the father.—(*Vibhāgasāra*, 13. 1—11.)

II O [3 (i)]

PARTITION AMONG SONS

WITH PREFERENTIAL SHARES

293. तैत्तिरीयसंहिता 2. 5—27.] तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति ।

For this reason they equip the eldest son with property. —(*Taittirīya Samhitā*, 2–5. 2–7.)

294. पञ्चविंश ब्राह्मण 16. 4. 4.] सोऽकामयत इन्द्रो मे प्रजायां श्रेष्ठः स्यादिति । तामस्मै स्रजं प्रत्यमुञ्चत् । ततो वा इन्द्राय प्रजाः श्रैष्ठ्यायातिष्ठन्त ।..... तस्माद्यः पुत्राणां दायं धनतममिवो-पैति तं मन्यन्तेऽयमेवेदं भविष्यतीति ।

He (Prajāpati) desired that Indra may be the best among his offsprings ; therefore he gave him the garland. Thenceforward people regarded him as the best. For this same reason, among one's sons, whichever son attains the best part of the inheritance is respected and is regarded as the head.—(*Pañchavinsha-Brāhmaṇa*, 16. 4. 4.)

NOTES

This shows that if the property is divided by the father during his lifetime, any son may be selected for the preferential share.

295. मनु 9. 105-106.] (A) ज्येष्ठ एव तु गृह्णीयात् पित्र्यं धनमशेषतः ।
शेषास्तमुपजीवेयुर्यथैव पितरं तथा ॥
(B) ज्येष्ठेन जातमात्रेण पुत्री भवति मानवः ।
पितॄणामनृणश्चैव स तस्मात्सर्वमर्हति ॥

(A) The eldest brother alone may take the entire paternal property ; the rest shall live under him, just as under their father.—(B) By the mere birth of the eldest son, a man becomes ' with 'son,' and free from the debt to the forefathers ; it is for this reason that he deserves the whole.—(*Manu* 9. 105-106.) [Quoted in *Smṛtichandrikā*, p. 615 ; *Aparārka*, p. 722 ; *Mitākṣarā*, p. 621 ; *Vivādaratnākara*, p. 457 ; *Vivādachintāmaṇi*, p. 194 ; *Vivādachandra*, 19. 2. 2 ; *Parāsharamādhava*, p. 334 ; *Dāyabhāga*, pp. 20, 62 ; *Vīramitrodaya*, pp. 556, 563 ; 643 ; *Smṛtitattva* II, p. 170.]

NOTES

(A) What is said here applies to cases where the eldest brother is possessed of superior qualifications and the rest of inferior qualifications.—(B) The debt to the forefathers is cleared by the birth of the first son. This is only commendatory to what has gone in the first verse.—(*Sarvajñanārāyaṇa.*)

(A) This applies to cases where the eldest brother is exceptionally righteous. The eldest brother shall take all the property that belonged to the father ; the younger brothers shall depend upon him, as they did upon the father, for their food and clothing. This means that all the brothers shall live together.—(B) As soon as the first son is born,—even before his sacraments have been performed,—the father becomes ' with son ' ; and thereby he becomes saved from the contingency of having ' no regions ' to go to after death, which contingency has been declared to be for all those ' without son ' ; similarly, according to the Shruti-text.—' By progeny one becomes freed from the debt due to the forefathers,'—the man becomes freed from the debt to the forefathers by the mere birth of the first son.—For this reason, the eldest brother shall take all the property, and the others shall live with him in peace.—(*Kullūka.*)

(A) What is said here applies to cases where the eldest brother is specially righteous.—' *The rest,* '—*i.e.*, the younger brothers.—Just as the sons depend upon the father for food and clothing, in the same manner shall the younger brothers depend upon the eldest.—(B) This verse provides the reason for the eldest son taking all the property.—(*Rāghavānanda.*)

(A) This sets forth an alternative to what has been declared in 9. 104 (to the effect that the brothers shall divide the property *equally* among themselves). -(B) This points out the superiority of the eldest to the younger brothers.—(*Nandana.*)

(A) This verse should be taken as advising co-residence of the inexperienced younger brothers with the experienced eldest brother till they grow up ; it should not be taken in the literal sense that there shall be no division of property among the several brothers of the same caste.—(*Smṛtichandrikā*, p. 615.)

(A) This should be taken as applying to cases where the younger brothers have not completed their studies, or are minors, or are not entitled to share in the property by reason of being insane or otherwise unqualified.—(*Aparārka*, p. 615.)

(A) The meaning is that, if the eldest brother is possessed of all the qualifications of the 'eldest,' he should be as complete a master of the partible property as the father.—'*Tamupajīvēyuḥ*,' shall live upon livings provided by the eldest brother.—(B) 'Becomes *with son*'—*i.e.*, fulfills the obligations imposed upon him by the scriptural injunction.—'*Mātra*' is meant to indicate that for this purpose the performance of the sacraments has not to be awaited.—'*Free from debt*,' i.e., from one of the three debts beset with which a man is born.—(*Vivādaratnākara*, pp. 457-458.)

(A) On the death of the father they shall live under the leadership of the eldest brother;—this is what is meant.—(*Vivādachintāmaṇi*, p. 195.)

(A) This is meant to indicate that it is not necessary that the brothers must divide after the father's death.—(*Vivādachandra*, 19. 2. 2.)

(A) On the father's death, the eldest brother is entitled to inherit the property.—(*Dāyabhāga*, p. 20.)—The meaning is that if the brothers wish to live together, then the eldest brother, who is capable of looking after the welfare of the family, shall take the entire property, and the rest shall live under him.—(*Ibid.*, p. 62.)

(A) What is meant is that it is highly commendable for all the brothers to live together under the highly qualified eldest brother.—(*Vīramitrodaya*, p. 557.)—Here co-residence has been commended as the principal alternative to be adopted by the brothers.—(*Ibid.*, p. 63.)—(B) '*Tasmāt*, etc.'—The fact of the eldest son having conferred benefits upon the father has been put forward here as the reason why he should take all the property; from this it follows that the property belonging to a person should, as a general rule, go to him who has conferred upon the owner of the property the highest benefits.—(*Ibid.*, p. 643.)

296. शङ्ख] ज्येष्ठ एव पितृवदर्थान् पालयेत्—इतरेषां तु रिक्थमूलमेव कुटुम्बम्। अस्वतन्त्राः पितृमन्तो मातर्येवमवस्थितायाम्।

The eldest brother shall maintain the property, like the father; the family of the others shall depend upon that property. The sons have no freedom while their father is alive, or even their mother.—(*Shaṅkha.*) [Quoted in *Aparārka*, p. 718.]

NOTES

What is said in regard to the mother applies to cases where the mother is capable of maintaining the family.—What is said regarding the propriety of the eldest brother not dividing the property with the younger brothers refers

to cases where a younger brother may still be studying the Veda. For those who have completed their study and are capable of installing the fires, the right course has been laid down in the text,—'*Evam saha vaseyurvā*, etc.'—(*Aparārka*, p. 719.)

297. आपस्तम्ब-धर्मसूत्र 14. 6—11.] (A) ज्येष्ठो दायाद इत्येके। (B) देशविशेषे सुवर्णं कृष्णा गावः कृष्णं भौमं ज्येष्ठस्य—रथः पितुः परीभाण्डं च गृहे ऽलङ्कारो भार्याया ज्ञातिधनं चेत्येके। (C) तच्छास्त्रैर्विप्रतिषिद्धम्। मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते।

(A) Some people hold that the eldest son is the sole inheritor.—(B) In certain countries, gold, black cows and black earth-products go to the eldest-son,—the chariot and the household utensils, to the father,—the ornament, and also the wealth obtained from relations, to the mother;—according to some.—(C) All this is contrary to the scriptures, where we read that (D) 'Manu divided his property among his sons.'—(*Āpastamba*: *Dharmasūtra*, 14. 6—11.) [Quoted in *Mitākṣarā*, p. 623; *Vivādaratnākara*, p. 472.]

NOTES

In (A) is set forth the view of some people that the 'entire property goes to the eldest son';—(B) mentions the 'preferential shares,' according to some people;—and (C) rejects these views as being contrary to the scriptures,—one scriptural text being quoted (D). Āpastamba sticks to his own view that the property should be divided equally among the sons. [The term '*bhauma*,' 'earth-products,' stands for corns, and 'ornament' for the ornament worn by the wife,—says the *Bālambhaṭṭi*.]—(*Mitākṣarā*, pp. 623-624.)

'*Bhaumam*,' what is produced from land, such as sesamum, beans and the like;—'*Parībhāndam*,' plates and dishes and other things.—(*Vivādaratnākara*, p. 482.)

298. गौतम 28. 3.] सर्वस्वं वा पूर्वजस्य। स इतरान् बिभृयात् पितृवत्।

Or the entire property shall go to the eldest; he shall support the others, like the father. (*Gautama*, 28. 3.) [Quoted in *Dāyabhāga*, p. 62; *Bālambhattī*, p. 623.]

NOTES

The particle '*vā*' implies the other options, dividing or living together; the latter, only if all are agreeable to it.—(*Dāyabhāga*, p. 62.)

299. मनु 9. 112-113.] (A) ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्च यद्वरम्
[*v.l.*, द्रव्येष्वपि परं वरम्] ।
ततोऽर्धं मध्यमस्य स्यात् तुरीयं तु यवीयसः ।
(B) ज्येष्ठश्चैव कनिष्ठश्च संहरेतां यथोदितम् ।
येऽन्ये ज्येष्ठकनिष्ठाभ्यां तेषां स्यान्मध्यमं धनम् ॥

(A) For the eldest, the preferential share shall consist of the twentieth part of the property, as also the best of all the chattels ; half of that for the middlemost ; and the fourth for the youngest.—(B) The eldest and the youngest shall receive their share according to the rule just stated ; those other than the eldest and the youngest shall take the middlemost share :—(*Manu*, 9. 112-113.) [Quoted in *Smṛtichandrikā*, p. 619 ; *Aparārka*, p. 717 ; *Mitākṣarā*, pp. 614, 621 ; *Vivādaratnākara*, pp. 468-469 ; *Vivādachandra* 20. 2. 1 ; *Madanapārijāta*, pp. 645, 678 ; *Dāyabhāga*, pp. 37-38 ; *Vīramitrodaya*, p. 560 ; *Smṛtitattva* II, p. 193 ; *Vyavahāramayūkha*, p. 97 ; *Vibhāgasāra*, 3. 2—4 ; *Dāyanirṇaya*, 19. 2 -7.]

NOTES

(A) Some people have held the view that the rules sanctioning the *preferential shares* are not meant to be observed during the present age ; they stand on the same footing as the rule sanctioning the killing of the cow for the offering of the *Madhuparka*.—This however is not right. No such restriction regarding the time of application is found anywhere.—' The *twentieth part* '—*i.e.*, the twentieth part of the entire estate shall be extracted and given to the eldest brother (as a preferential share) ;—' *half of that*,' *i.e.*, the fortieth part, to the middlemost brother,—and the ' fourth,' *i.e.*, the eightieth part, to the youngest. After all these preferential shares have been extracted, the remainder shall be divided into three equal shares.—Further, among all the chattels, that which happens to be the best is also to be given to the eldest brother.—If we adopt the reading ' *dravyeṣvapi param varam*,' the meaning would be that ' among all kinds of things, good, bad and indifferent, the best of each kind shall be given to the eldest brother' ; for instance, if there are cows and horses, the best cow and the best horse shall be given to him absolutely (as a preferential share)—not in lieu of another article, or in return for a price.—This rule sanctioning the preferential shares is meant only for those cases where all the three brothers are possessed of special qualifications ; as it is only in such cases that preferential shares are found to be actually given.—(B) In a case where a man dies leaving more than three sons, the eldest and the youngest shall receive their shares in the manner just stated, if they are duly qualified ; and the ' fortieth part,' which has been ordained for the qualified

' middlemost brother ' shall be divided equally among the middle ones if all of them are unqualified ; but if all the middle ones are equally qualified, then each of them shall receive a ' fortieth part.—(*Medhātithi.*)

(A) Out of the joint property the twentieth part, the fortieth part and the eightieth part being extracted, the twentieth part and one good thing should be given to the eldest brother as his preferential share, and the other two parts to the two younger brothers ; the remainder shall be divided equally among them. This shall be done if all the three brothers are possessed of equal qualifications.—(B) Where there are several ' middle ' brothers, the rule will be as in the second verse.—' *Kaniṣṭhaḥ,* ' the youngest of all. The portion assigned to the ' middlemost ' shall be given to each of the middle brothers.—(*Sarvajñanārāyaṇa.*)

(A) To the eldest shall be given the twentieth part of the joint property and also the best among the chattels ; to the middlemost shall be given the fortieth part ; and to the youngest, the eightieth part ; the remainder of the property shall be divided equally among them.—(B) The eldest and the youngest shall receive the preferential shares just mentioned ; as regards the middle ones, each of them shall receive a fortieth part which has been assigned to the ' middlemost ; and among these there shall be no differentiation on account of age ; it is for stressing this fact that this verse has been added.—(*Kullūka.*)

The twentieth part, extracted out of the joint property, shall be given to the eldest ; as also the best of all things ; for the middlemost, the fortieth part shall be extracted ; and for the youngest, the eightieth part ; the remainder shall be divided equally.—The meaning is that when the property is being divided, the eldest brother, if he is worthy, shall receive the best share.—(B) The first verse has laid down the rule relating to cases where there are *three* brothers ; the second verse lays down the rule for cases where there are four or more brothers.—' *Yathoditam,* ' *i.e.,* the twentieth and eightieth parts respectively ; what has been assigned to the ' middlemost ' shall be divided equally among the middle brothers ; and among these no differentiation shall be made by reason of the difference in their ages.—(*Rāghavānanda.*)

(A) This lays down the method to be adopted when the property is to be divided. The twentieth part of the entire property shall be the preferential share of the eldest ; as also the best among the chattels ; half of that shall go to the middlemost, *i.e.,* the fortieth part of the nineteen parts of the property that remains after the extraction of the eldest brother's preferential share ; and a fourth part of the eldest brother's share......(?).—to the youngest brother.—(B) If there are several middle brothers, each of them shall receive what has been laid down for the ' middlemost. '—(*Nandana.*)

(A) The eldest is to receive the twentieth part and also the best of all the chattels ; and the fourth part of that shall go to the youngest.—(B) The middle share is for the middle sons.—(*Rāmachandra.*)

(A) Manu here lays down the assignment of preferential shares.—To the eldest brother, who is also the best equipped with learning and other qualities, shall be given the twentieth part of the whole partible property, and also the best thing among the articles constituting that property,—as his preferential share ;—half of this, *i.e.,* the fortieth part of that same property, as also a middling thing shall be given to the middlemost in age, who is also possessed of middling learning and other qualities ; the quarter of it, *i.e.,* the eightieth part of that

same property and also some little thing shall be given to the youngest in age who is also possessed of the lowest qualifications.—(*Smṛtichandrikā*, p. 619.)

All these unequal divisions depend upon the wish of the person making the division.—(*Aparārka*, p. 717.)

Of the entire estate, the twentieth part, as also the best of all the chattels, shall be given to the eldest; half of that, *i.e.*, the fortieth part, and a middling thing, shall be given to the middlemost; and the fourth of that, *i.e.*, the eightieth part and some inferior article shall be given to the youngest;—this is the mode of 'preferential' partition made after the death of the parents. [All these preferential shares shall he awarded by the neutral persons who are making the partition—says the *Bālambhaṭṭī.*]—(*Mitākṣarā*, p. 621.)

(A) The preferential shares here laid down are for those cases where the eldest and others are possessed of special qualifications. The rule on this point is as follows:—When there are many sons born of the same mother and possessed of good qualities,—but there is a gradual decrease in these qualities,—then, out of the joint property, the twentieth part shall be extracted as the preferential share of the eldest brother, and the best thing among the chattels is also to be given to him; half of that, *i.e.*, the fortieth part for the middlemost brother, also a middling thing from among the chattels; and for the youngest brother, the 'fourth,' *i.e.*, the eightieth part, and also an inferior thing from among the chattels.—(B) When however only the eldest and the youngest are possessed of good qualities, then they are to receive the preferential shares just mentioned; as for the middle brothers, '*the middlemost share*,' *i.e.*, the 'fortieth part' that has been assigned as the preferential share for the middlemost,' shall be divided equally among them;—if there are several 'middle' brothers, and all are possessed of good qualities, then each of them shall receive a fortieth part.—(*Vivādaratnākara*, p. 469.)

This applies to cases where the property is more than 'ten' and when there is difference in the qualifications of the brothers.—(*Vivādachandra*, 20. 2. 2.)

The meaning of this is as follows:—Out of the partible property, the twentieth part, and also the best among the partible articles, are to be given to the eldest brother;—the fortieth part of the joint property and a middling article to the middlemost;—and the eightieth part and an inferior article to the youngest;—the remainder of the property is to be divided equally among all of them.—There are many other texts sanctioning such *unequal* division; but even though sanctioned, as the practice is not followed by the people, it should not be adopted in practice; the case being like the practice of '*niyoga*' which, though sanctioned by the scriptures, is not adopted in practice at the present time.—(*Madanapārijāta*, p. 646.)

This text lays down the method of 'preferential shares.' Such unequal division (by the father) is permissible only in connection with his self-acquired property; in the ancestral property, all have equal shares; it being absolutely wrong to have an unequal division merely by the father's whim.—(*Parāśhara-mādhava*, pp. 332-333.)

In this text of Manu are set forth the preferential shares in the shape of 'the twentieth part and the best among the chattels,' the 'half' and the 'fourth' and so forth.—(*Dāyabhāga*, p. 38.)

The preferential share has been described here by Manu.—(*Vīramitrōdaya*, p. 560.)

Here Manu has set forth the preferential shares of the eldest and other brothers, in a general way.—(*Smṛtitattva* II, p. 193.)

This lays down the peculiarities in regard to the share to be assigned to the eldest brother.—(*Vyavahāramayūkha*, p. 97.)

300. मनु 9. 114] सर्वेषां धनजातानामाददीताग्र्यमग्रजः ।
यच्च सातिशयं किञ्चित् दशतश्चाप्नुयाद्वरम् ॥ [*v.l.*, वरान्]

Among the goods of every kind, the eldest shall take the best ; as also anything that may be particularly good ; also the best of ten animals.—(*Manu*, 9. 114.) [Quoted in *Vivādachintāmaṇi*, p. 200 ; *Vivādachandra*, 20. 1. 1 ; *Vivādaratnākara*, p. 469 ; *Vibhāgasāra*, 3. 2–5.]

NOTES

The first line only reiterates what has been said in the preceding verse, regarding the eldest brother taking 'the best of the chattels.'—'*Jāta*' may mean *kind* or *variety*.—'*Anything particularly good*,' such as a piece of cloth or an ornament.—'*Best of ten animals*.'—If there are ten horses or cows, he shall take the best of these.—Some people read '*varān*' and take it as qualifying '*dashataḥ*,' which is construed as Accusative Plural ; the meaning being that 'he shall take *ten good animals*.'—(*Medhātithi*.)

When the property has been divided into the requisite number of shares, that which is the best, and which the eldest brother likes best, should be taken by him ; similarly among all the shares, what may happen to be particularly good shall be taken by the eldest ; and out of every ten animals to be partitioned, that which is the best shall also be taken by him, in addition to what may be already contained in his own share.—This applies to cases where the eldest brother possesses very high qualifications and the younger ones very low qualifications.—(*Sarvajñanārāyaṇa*.)

From among the goods of all kinds, the eldest brother shall take what may be the best ;—this reiterates what has been said in the preceding verse.—If there is any single thing that is particularly good, that also the eldest will take ; as also the best one from among every ten animals.—This applies to cases where the eldest brother possesses high qualifications and the younger ones are devoid of good qualities.—(*Kullūka*.)

'*Sarvēṣām*,'—from among the things to be divided.—'*Dashataḥ*,' from among ten cows or other animals.—This refers to cases where it may be possible (*i.e.*, where there may be ten animals to be divided).—(*Rāghavānanda*.)

The preferential shares mentioned in the preceding verse refer to cases where the qualifications of all the brothers are equal; the present verse lays down what is to be done in cases where the eldest brother possesses distinctly higher qualifications.—'*Sarveṣām dhanajātānām*,' among all such goods as cattle, land, gold and so forth,—'*the best*,'—'*the first-born*,' the eldest, shall take.—If there is anything '*particularly good*,' which cannot be partitioned,—such as the image of a deity,—that also the eldest shall take;—he shall also receive the best one from among every ten animals.—(*Nandana.*)

The best of all kinds of goods,—the best of ten animals.—(*Rāmachandra.*)

If the eldest brother is possessed of very superior qualifications, and the others have no qualifications, then (*a*) that which is the best article among all the goods,—(*b*) that which may be the best among its kinds, *e.g.*, the best among rubies,—and (*c*) the best out of every ten animals—cows, buffaloes etc.,—the eldest brother shall take.—(*Vivādaratnākara*, p. 469.)

301. मनु 9. 115.] उद्धारो न दशस्वस्ति सम्पन्नानां स्वकर्मसु ।
यत् किञ्चिदेव देयं तु ज्यायसे मानवर्धनम् ॥

There is to be no preferential share "out of ten" (animals), if all the brothers are efficient in their occupations; some little thing however shall be given to the eldest, as a mark of respect.—(*Manu*, 9. 115.) [Quoted in *Smṛtichandrikā*, p. 619; *Vivādachandra*, 20. 2. 1; *Vivādaratnākara*, p. 476; *Dāyabhāga*, p. 43; *Dāyanirṇaya*, 19. 2-9.]

NOTES

'*Dashasu*'—out of ten *animals*;—the preferential share mentioned in the preceding text, there is to be none,—when the brothers are all '*efficient*'—particularly excellent—'*in their occupations*,'—of learning and so forth.—Some people take the term '*out of ten*' as purely illustrative; the sense being that there is to be *none* of the preferential shares that have been mentioned in the preceding verse.—Even in such cases, however, the other brothers shall give to the eldest '*some little thing*'—some present,—'*as a mark of respect*.'—(*Medhātithi*.)

This refers to cases where the eldest brother possesses very poor qualifications, and all the younger brothers are possessed of equal qualifications regarding their conduct and behaviour; there is to be none of the three preferential shares mentioned in the foregoing text. Where there is partition among brothers who are possessed of ordinary middling qualifications, some little thing shall be selected and given to the eldest, as a mark of respect.—(*Sarvajñanārāyaṇa*.)

The preferential share mentioned in the preceding text—'the best of ten'—is not to be given to the eldest brother, in cases where all the brothers are highly qualified in the matter of learning and other equipments. But in such cases also, '*some little thing*' shall be given to the eldest *as a mark of respect.*' This prohibition of the preferential share in cases where all are equally qualified implies that the preferential share spoken of before is meant for cases where the eldest possesses superior qualifications.—(*Kullūka.*)

In cases where all the brothers are qualified, the eldest brother is not to receive the best of things —'*Svakarmasu*' in studying the Veda and other occupations.—*As a mark of respect* '—with a view to honour him.—'*some little thing*' shall be given to the eldest brother. —(*Rāghavānanda.*)

This text states an exception to the rule regarding preferential shares.—(*Nandana.*)

'*Preferential share*'—stands for the 'excellent' and 'particularly good' and such things spoken of in the preceding texts.—(*Rāmachandra.*)

'*Uddāhra*' stands for the property that is extracted out of the partible property, for being given to the eldest and others.—'*Dashasu*,' *i.e.*, out of the property that may be enough for livelihood.—'*Svakarmasu*,' such acts as they are entitled to perform;—'*sampannānām*,' efficient in doing:—when all the brothers are such,—even though there be many things to be divided,—inasmuch as all the brothers are equally devoted to their duties;—there is neither a 'preferential share' nor any present 'as a mark of respect.' But in cases where the goods to be partitioned are few, and the brothers are unequally equipped with learning and other qualities,—even though by reason of the property being just enough for their maintenance,—there shall be no 'preferential share,' yet '*as a mark of respect*,' '*some little thing*' may be given to the eldest brother. Thus it follows that there are to be preferential shares only in cases where the brothers have a large property and there is inequality among the brothers regarding learning and other things.—*Smṛtichandrikā*, p. 619.)

If the sons are all equal in the matter of learning and other qualifications, then there should be no such preferential share as the 'best of ten animals.'—This is only illustrative; it is really a prohibition of all kinds of 'preferential share'; as is clear from the words '*some little thing*' in the text; all that need be given to the eldest is some little thing, 'as a matter of respect,' merely for his age. In cases where there is no difference among the brothers in regard to their qualifications, 'seniority' has been declared (by Manu, 9. 123-124) to be determined by the position of the mothers—(*Vivādaratnākara*, p. 476.)

In this matter of 'preferential share,' the view of *Mishra* is as follows:—If the eldest brother is possessed of very good qualifications he should get a double share:—if he possesses ordinary qualifications, he is to receive the 'twentieth part,' as an additional share; otherwise only some little thing by way of a present.—The view of the *Dāyabhāga* is as follows:—When the partition is among uterine and non-uterine brothers, the eldest brother with qualifications is to receive the 'twentieth part' as an additional share; if it is among uterine brothers only, the eldest brother with superior qualifications is to get a double share; if he has only ordinary qualifications, then he shall only get something by way of present.—(*Dāyanirṇaya*, 9. 2—10, etc.)

302. मनु 9. 116-117.] (A) एवं समुद्धृतोद्धारे समानंशान् प्रकल्पयेत् ।
(B) उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना ॥
एकाधिकं हरेज्ज्येष्ठः पुत्रोऽध्यर्धं ततोऽनुजः ।
अंशमंशं यवीयांस इति धर्मो व्यवस्थितः ॥

After the preferential share has heen extracted, equal shares shall be allotted. But if no preferential share has been extracted, the allotment of shares shall be in the following manner :—The eldest shall take one share in excess (*i.e.*, two shares) ; the one younger to him, a share and a half ; and the younger ones, one share each ; such is the settled law. —(*Manu*, 9. 116-117.) [Quoted in *Smṛtichandrikā*, p. 620 ; *Mitākṣarā*, p. 622 ; *Vivādaratnākara*, p. 478 ; *Parāsharamādhava*, p. 334 ; *Dāyabhāga*, pp. 37-38 ; *Vīramitrodaya*, p. 561 ; *Vyavahāra-mayūkha*, p. 97.]

NOTES

(A) '*Extracted*'—set apart ; —'*uddhāra*'—preferential share ; —'*equal shares shall be allotted*'—out of the property that remains after the extraction.—(B) If no preferential share has been set apart, the allotment of shares shall be in the following manner :—The eldest brother shall take '*one share in excess*' of his own ; that is, he shall take two shares ;—the brother next to him shall have '*a share and a half*' ;—'*the younger ones*,' born after the second brother, shall receive '*one share each*'—nothing more nor less.—(*Medhātithi*.)

(A) '*Equal shares*'—in the property remaining after the preferential shares have been extracted. (B) '*If no preferential share has been extracted*,'—somehow, by reason of the father or some one else being unwilling,—the allotment of shares shall be as follows :—'*one share in excess*,'—*i.e.*, two shares.—The younger—next to him—shall have a share and a half ;—others shall have equal shares.—This shall be so when all are possessed of equal qualifications.—(*Sarvajñanārāyaṇa*.)

(A) What remains of the property after the extraction of the 'twentieth part'—shall be assigned in equal shares to the brothers.—(B) If the twentieth part and other preferential shares are not extracted, then the allotment of shares shall be as follows :—'*one share in excess*,'—*i.e.*, two shares—shall be taken by the eldest son ;—the one younger to him shall receive '*a share and a half*' :—the younger ones shall receive one share each.—This applies to cases where the eldest and the one next to him are possessed of specially high qualifications in the way of learning and the like, and the younger ones are without any such qualifications.—(*Kullūka*)

(A) '*Samuddhṛtoddhāre*' -In the property left after the preferential shares have been extracted. (B) Where no such has been extracted, then the following shall be the allotment: '*one share in excess*'—two shares.—'*A share and a half.*'—This shall be so when the eldest and the one next to him are superior in regard to learning, etc., and the younger ones are devoid of all good qualities.—'*Tatonujaḥ*'—one next to the eldest.—Besides these two, all the rest shall have equal shares.—(*Rāghavānanda.*)

(A) After the preferential shares have been extracted, of the remainder, equal shares shall be allotted.—(B) This second alternative implies that the preferential shares are not obligatory. The eldest shall have two shares; the one next to him shall have a share and a half; the younger ones shall have one share each.—This applies to cases where the eldest brother possesses very superior qualifications.—(*Nandana.*)

(B) If no preferential share has been extracted, the allotment shall be as follows:—'*one share in excess,*'—*i.e.,* two shares.—(*Rāmachandra.*)

(A) What remains after the extraction of the preferential shares shall be divided equally.—(B) Or, even without extracting any preferential shares, there may be unequal division: '*one share in excess,*'—*i.e.,* two shares.—(*Smṛti-chandrikā,* p. 620.)

(B) The eldest has two shares; the one next to him has a share and a half; the younger ones have one share each. This is an unequal division even without preferential shares.—(*Mitākṣarā,* p. 622.)

(B) '*One share in excess,*'—*i.e.,* two shares;—the one next to him shall have a share and a half; those younger to him are to have one share each;—this shall be so when no preferential shares have been given. This applies to cases where the eldest brother and the one next to him are endowed with very superior qualities and learning, while the others are without any special qualifications. The preferential shares—in the shape of the twentieth part and the rest—are given when all the brothers are possessed of good qualities and conduct, and there is no difference among them on this score.—(*Vivāda-ratnākara,* p. 478.)

303. मनु 9. 156-157.] (A) समवर्णासु ये जाताः सर्वे पुत्रा
द्विजन्मनाम् ।
उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समम् ॥
(B) शूद्रस्य तु सवर्णैव नान्या भार्योपदिश्यते ।
तस्यां जाताः समांशाः स्युर्यदि पुत्रशतं भवेत् ॥

(A) All the sons of twice-born men, born of wives of the same caste, shall divide the property equally, after the others have given to the eldest a preferential share.—(B) For the Shūdra has been ordained a wife of his own caste only, and no other; and all the sons born of her shall be entitled to equal shares, even if there be a hundred sons.—(*Manu,* 9. 156-157.) [Quoted in *Smṛtitattva* II, p. 193; *Vivādaratnākara,* p. 532.]

NOTES

See II, 221, and 310 ; also II, 223.

Whether the wives belong to the 'same caste' or to different castes, it is only the *Shūdra* son that has been precluded from inheriting all kinds of property ; hence what is asserted here must be understood to apply to sons of the twice-born castes. Thus the sense is that if a Brāhmaṇa has no son by his Brāhmaṇa wife, his sons born of the other wives, shall inherit his entire property.—The text cannot mean that 'after the preferential share has been given to the eldest brother, all the sons *born of different castes* shall divide the property *equally*—with those '*born of the same caste*' ;—as this would be contrary to what has gone in Manu, 9.153 : '*Chaturomshāṇ, etc.*', where each son of the lower caste has been assigned one share less than that of the higher caste.—It has been argued that—" This equality would be right in a case where the sons of the wife of the same caste are devoid of qualities ; while those of the lower castes are highly qualified.' —This, however, is not right ; because it is the caste of the son that is the most important factor ; and it has been held that as soon as a son is born of a wife of the same caste, he becomes the owner of the entire property.—Thus the rule on the subject should be that when there are no sons of the wife of the same caste, even those sons that are born of wives of different castes should give to their eldest brother of the same caste as themselves, a preferential share and divide the rest equally.—(B) for the *Shūdra* there is no irregular wife of the 'ascending' degree. —(*Medhātithi.*)

(A) There is to be a preferential share only in case he belongs to the same caste as the father, not otherwise.—(B) They shall have equal shares, *i.e.*, there will be no preferential shares.—(*Sarvajñanārāyaṇa.*)

(A) For twice-born men, if sons are born of the same caste as themselves they shall give a preferential share to the eldest and then divide the rest equally with the eldest.—(B) For the *Shūdra* there can be only one wife, of the same caste as himself,—no other, either of a higher or a lower caste ;—the sons that are born of that wife—even though they be a hundred, shall all have equal shares, and no preferential share shall be given. (*Kullūka.*)

(A) This applies to cases where the sons possess no special qualifications.—(*Rāghavānanda.*)

(A) This lays down the method of division among sons belonging to the caste of their mothers, but to castes different from that of the father.—(*Nandana.*)

(A) The '*twice-born*'—*Brāhmaṇas, Kṣattriyas* and *Vaishyas.*—Having given to the eldest—belonging to the highest caste—the preferential share—in the shape of the best thing among all the chattels,—the other brothers shall then divide the property equally.—(B) They shall all receive equal shares.—(*Rāmachandra.*)

For the sons of the *Shūdra*, there is no preferential share.—(*Smṛtitattva* II, p. 193.)

In a case where twice-born men have several sons born of several wives of the same caste as themselves,—*or* several sons born of several wives not belonging to the same caste as themselves,—something shall be given to the eldest brother as a preferential share, and the rest shall be divided equally among all.—(*Vivādaratnākara.*)

304. वसिष्ठ] अथ भ्रातृणां दायभागः । द्व्यंशं हरेज्ज्येष्ठो गवाश्वस्य चैकं दशमम् । अजादयो गृहं च कनिष्ठस्य । कार्ष्णायसं गृहोपस्करणानि मध्यमस्य ।

Then follows partition of inheritance among brothers : The eldest shall take two shares, and of cows and horses, the one-tenth ; goats and other animals and the house shall go to the youngest ; and articles of iron and household requisites go to the middlemost. – (*Vasiṣṭha.*) [Quoted in *Vivādaratnākara*, p. 479.]

NOTES

[See also Ch. II, Sec. 275.]

'*Dvyamsham*'—Two shares ; the eldest brother shall take.—'*one-tenth,*' —*i.e.*, of ten cows and ten horses, he shall take the best—*one* of each.—This text of Vasiṣṭha applies to cases where the eldest brother possesses specially high qualifications, and the others only ordinary ones.—(*Vivādaratnākara*, p. 479.)

305. गौतम] वृषभोऽधिको ज्येष्ठस्य—वृषषोडशा ज्यैष्ठिनेयस्य समधा वा ज्यैष्ठिनेयेन यवीयसा ।

One bullock in excess shall go to the eldest ; one out of sixteen bullocks to the eldest son born of the seniormost wife ; or it will be equal between the youngest and the son of the seniormost wife. (*Gautama.*) [Quoted in *Vivādaratnākara*, p. 474.]

NOTES

'*Jyeṣṭhaḥ,*' meant here is the son born of the juniormost wife, but before all other sons, according to Manu (9. 122-123) ;—'*Jyaiṣṭhineya*' is the eldest son born of the seniormost wife ;—'*Samadhā,*' equally. This applies to cases where all the brothers are possessed of equal qualifications.—(*Vivādaratnākara*, p. 475.)

306. शङ्खलिखित] वृषभोऽधिको ज्येष्ठाय गृहं यवीयसे ।

One bull in excess should be given to the eldest ; the house to the youngest.—(*Shankha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 475.]

NOTES

Here also the 'eldest'—should be taken as the son of the juniormost wife, (but born before all other sons)—according to Manu.—(*Vivādaratnākara*, p. 475.)

307. मनु 9. 122-123.] पुत्रः कनिष्ठो ज्येष्ठायां कनिष्ठायां च पूर्वजः ।
कथं तत्र विभागः स्यादिति चेत् संशयो भवेत् ।
एकं वृषभमुद्धारं संहरेत स पूर्वजः ।
ततोऽपरेऽज्येष्ठवृषास्तदूनानां स्वमातृतः ॥

(See next section—*Manu*, 9. 124.)

In case the younger son is born of the senior wife and the elder one of the junior wife, how would the partition be made ?—If such a doubt arises, the son born of the senior wife shall take one bullock as his preferential share ; the other bullocks, which are not so good, shall go to those who are junior to him on account of the position of their mothers.—(*Manu*, 9. 122-123.) [Quoted in *Vivādaratnākara*, p. 473.]

NOTES

'*Senior wife*'—the wife married first ;—'*Junior wife,*' one married later.—As between the sons born of these wives, the question arises whether 'seniority' shall be determined by the order in which their mothers have been married, or by the order in which they were themselves born.—The answer is given in the second verse.—'*Pūrvajaḥ,*' '*elder,*' is one born of the '*pūrvā,*' the senior wife, though himself younger in age ; he is entitled to one excellent bullock ; the other bullocks that there may be, *which are not so good,* shall be allotted to the other several brothers, one to each. Hence the preferential share for the son of the seniormost wife consists of the *best bullock* ; the superiority of his share consisting only in the *quality* of the bullock, not in the *number.*—'*Tadūnānām,*' 'those *junior* to him,' *i.e.*, to the said eldest son,—'*on account of the position of their mothers,*' *i.e.*, according to the order of the marriage of their mothers. Thus seniority among sons is determined by the seniority among their mothers, and not by their own ages.—(*Medhātithi.*)

'*Kaniṣṭhaḥ*'—younger in age.—'*Ekam*'—superior—'*uddhāram,*' in excess,—'*Pūrvajaḥ,*' the brother younger in age (but 'senior').—'*Tataḥ aparē-ajyēṣṭhavṛṣāḥ,*' bullocks not taken by the 'eldest' go to '*tadūnānām,*' those younger in age, to the sons of the junior wife (?). in accordance with the seniority among their mothers. That son also whose mother is senior is to have an additional bullock, but this shall be inferior to the aforementioned bullock ; one inferior to the second to the son of the next junior mother and so on, to the son of each succeeding junior mother. In this manner the preferential share being given to all these, the remainder shall be divided equally among the sons.—(*Sarvajñanārāyaṇa.*)

The question being—How will seniority be determined in a case where the son born of the senior wife is younger in age ? That is, will seniority among the

sons be determined by the order in which their mothers may have been married or by the order of their birth ?—The answer is provided in the second verse — The '*pūrvajaḥ*,' *i.e.*, the son born of the senior wife,—even though younger in age—shall take one bullock as the preferential share. The other superior bullocks [the reading, under this explanation would be '*jyeṣṭhavṛṣāḥ*' instead of '*ajyeṣṭhavṛṣāḥ*'] that may be there—besides the best already allotted,—one of these goes to each of those sons who are 'junior' to the aforesaid son of the senior wife. So that seniority among the sons is to be determined by the order of their mother's marriage.—(*Kullūka.*)

The question being—among the sons of several mothers, is seniority determined by the order of their mother's marriage, or by the order of the sons' birth ?—the answer is given in the second verse—'*Pūrvajaḥ*,' *i.e.*, the son born of the senior wife.—The other sons shall receive one each, of the bullocks that are not so good as the one already allotted. The reason for this lies in the fact that the latter sons are regarded as junior by reason of the marriage of their mothers being later. (*Rāghavānanda.*)

The question is—will partition proceed on the basis of the seniority of the mothers' or on that of the age of the sons ?—The answer is that the '*Pūrvajaḥ*,'—*i.e.*, the son born of the junior wife, before all the other sons—shall take one bullock. The other bullocks, not so good as the one allotted to the eldest,—and which must be at least three—go to those junior to that eldest ; the allotment being made on the basis of their mothers.—(*Nandana.*)

(*a*) When the son, younger in age, is born of the senior wife, and the one elder in age is born of the junior wife, - or (*b*) a Brāhmaṇa having a *Brāhmaṇa* and a *Kṣattriya wife*, and the son, younger in age, is born of the *Brāhmaṇa* wife, and the one elder in age is born of the *Kṣattriya* wife.—'*Pūrvajaḥ*,' born of the senior wife or of the junior wife (?).—(*Rāmachandra.*)

The question propounded here is in reference to a case where there are several sons born of mothers belonging to the same caste as the 'eldest' ; because the question of partition among sons born of mothers of different castes has been dealt with by Manu later on.—The term '*pūrvajaḥ*' here stands for the son who is born of the senior wife, but is younger in age ; as is clear from the fourth line. The other bullocks, besides the best allotted to the 'eldest,'—'*which are not so good*,'—belong to those who are junior to the said 'eldest,'—*i.e.*, those who are born of mothers junior to the mother of the 'eldest' son.—(*Vivādaratnākara*, p. 473.)

308. मनु 9. 124.] ज्येष्ठस्तु जातो ज्येष्ठायां [*v.l.*, अज्येष्ठायां] हरेद्
वृषभषोडशाः [*v.l.*, शम्] ।
ततः स्वमातृतः शेषा भजेरन्निति धारणा ॥

The elder son born of the senior [*v.l.*, junior] wife may take fifteen cows with a bull as the sixteenth ; the others may take the rest according to the position of their mothers ; such is the settled rule.—(*Manu*, 9. 124.) [Quoted in *Vivādaratnākara*, p. 473.]

NOTES

This verse puts forward another alternative regarding 'preferential shares' in the case of sons spoken of in the preceding verses.—If the elder son is born of the *junior wife* (*reading* '*ajyeṣṭhāyām*,' 'junior wife'), he shall take fifteen cows and a bull as the sixteenth . . . The '*others*' the remaining sons, shall take the other cows, '*according to the position of their mothers*,' *i.e.*, he whose mother is senior shall take a better cow than the one taken by him whose mother is junior.—Or the verse may be taken as laying down an additional 'preferential share' for 'the son born of the *senior wife*,'—in addition to what has been laid down in the preceding verses. In this case the reading would be '*jyeṣṭhāyām*,' 'senior wife.'—These two verses are purely declamatory (not mandatory); the finally settled rule is the one laid down in Manu, 9. 125.—(*Medhātithi.*)

'*Jyeṣṭhāyām*'—the wife married first.—'*Vṛṣabhaṣoḍasham*' (*v.l.*, for '*vṛṣabhaṣoḍasāḥ*') is that herd of fifteen cows of which a bull is the sixteenth';—*tataḥ*,'—other than the elder son,—shall each take a good bull, 'according to the seniority among their mothers.'—(*Sarvajñanārāyaṇa.*)

The son born of the wife married first, who is also the eldest among the brothers in age, shall take those fifteen cows of whom a bull is the sixteenth, *i.e.*, he shall receive fifteen cows and a bull. The other sons, born of several mothers, shall divide among themselves the rest of the cows and bulls, in accordance with the position of their mothers in relation to the seniormost wife.—(*Kullūka.*)

The son who is eldest in age and also born of the seniormost wife shall receive fifteen cows and a bull.—'*Svamātṛtaḥ*,' according to the order in which their mothers were married.—'*Sheṣāḥ*,' the others born of the junior wife of the same caste as the husband, shall take their *share*;—'*bhāgam*' being understood.—(*Rāghavānanda.*)

'*Vṛṣabhaṣoḍasāḥ*'—those cows of whom a bull forms the sixteenth;—This preferential share being due to him on account of his extreme affinity (to the father) due to his belonging entirely to the same caste.—'*Sheṣāḥ*,' the other sons,—by reason of their mother being junior,—shall each take one bull, not so good as the one taken by the eldest.—This view that Manu has set forth is that of other people; his own view that seniority among sons is always based upon age, is declared in 9. 125;—so says the author of the *Prakāsha*.—*Halāyudha*, on the other hand, has explained these texts (122—124) as follows:—(*a*) 'In a case where a younger son is born of a senior wife, and the elder of a junior wife, the elder one born of the junior wife shall take an excellent bullock as his preferential share; the other bullocks, which are not so good, shall be given, one each, to the other sons, who are junior to the aforesaid son,—the quality of the bullocks given to each depending upon the position of his mother among the wives (122-123).—(*b*) When, however, the son born of the senior wife also happens to be the eldest in age, then he shall receive fifteen cows with a bull as the sixteenth; and the other sons shall each receive as his preferential share one bullock, according to the position of their mothers. (124).—(*Vivādaratnākara*, pp. 473-474.)

309. हारीत] विभजिष्यमाणे गवां समूहे वृषभमेकधनं वरिष्ठं वा ज्येष्ठाय दद्युः देवतां गृहं च। इतरे निष्क्रम्य कुर्युः। एकस्मिन्नेव दक्षिणं ज्येष्ठायानुपूर्व्यमितरेषाम् ॥

When the property is being divided, they shall give to the eldest brother the best or the strongest, of the herd of cattle,—as also the Deity and the house ; the other brothers shall go out and build there. Or the best part of the house shall go to the eldest, and the others to the other brothers in due order.—(*Hārīta.*) [Quoted in *Vivādaratnākara*, p. 471.]

NOTES

'*Ekadhanam*'—the best of the property ;—'*Deity*,' the image of Viṣṇu and other deities ;—'*gṛham*,' the ancestral house ;—*niṣkramya kuryḥ*,' 'shall go out and build'—other houses for themselves.—In case it be found impossible for the other brothers to go out and build other houses, the *dakṣiṇa*, *i.e.*, the best part of the house shall go to the eldest.—'*In due order*,' *i.e.*, the middling part to the middle brothers, and that still inferior to the youngest.—*Harihara*, however, taking '*devatā-gṛham*' as a compound word, has explained it as 'the pavilion for the worshipping of Durgā and other deities,' and taken the text to mean that this pavilion being given to the eldest brother, the other brothers shall build other pavilions.—(*Vivādaratnākara*, p. 471.)

310. गौतम 28. 5—10.] विंशतिभागो ज्येष्ठस्य—मिथुनम्, उभयतोदद्युक्तो रथो, गोवृषः। काणखोरकूटवण्डा मध्यमस्यानेकाश्चेत्। अविर्धान्यायसी गृहमनोयुक्तं चतुष्पदां चैकैकं यवीयसः। सममेवेतरत् सर्वम्। द्व्यंशी वा पूर्वजः स्यादेकैकमितरेषाम्।

The twentieth part shall go to the eldest ; also a pair (of cows), a chariot along with an animal with two rows of teeth, and a bull. The one-eyed, the old, the hornless, the tailless, shall go to the middlemost ; (even) if they are more than one. The ewe, grains and iron, a house, (a bullock) with a cart, and one each of the quadrupeds shall go to the youngest. The rest shall be divided equally.—Or the eldest shall have two shares and the others, one share each.—(*Gautama*, 28. 5—10.) [Quoted in *Vivādaratnākara*, pp. 470 and 478 ; *Parāsharamādhava*, p. 334 ; *Dāyabhāga*, p. 38.]

NOTES

Of the entire paternal property, the twentieth part shall go to the eldest brother ; also a '*pair*'—of cows ;—a chariot yoked to one of the '*animals with two rows of teeth*,'—*i.e.*, horse, mule and so forth,—and a '*bull*' for purposes of breeding ;—all this shall, if possible, form the 'preferential share' for the eldest brother.—'*Khora*,' old—'*kūṭa*,' hornless,—'*vaṇḍa*,' tailless ; such an animal, also one-eyed, shall be the 'preferential share' for the middle brother; '*if there are more than one*' middle brothers, then each of them shall have this preferential share.—'*Avi*,' ewe,—'*grain and iron*' being mentioned by means of a compound, what is meant is that some fitting article is to be given ;—'*house*' one house,—'*a cart*' with a bullock yoked to it, and '*one each of the quadrupeds*'—cows and the like ;—all this shall be the 'preferential share' for the youngest.—What remains after these preferential shares have been given away, shall be divided equally.—In other cases also where even there is a gradation in the preferential shares among several brothers, the distribution should take place on the basis of the qualifications possessed by the eldest, the middle and the youngest brothers. Among the people, however, the ordinary practice is that only the twentieth part of the property is given as the preferential share to the eldest brother, in respect of his seniority,—and no preferential share is given to the middle or the youngest brother.—(*Vivādaratnākara*, pp. 470-471.)—'*Or the eldest shall have two shares, etc. etc.*' ;—this in cases where the eldest brother is possessed of very superior qualifications and the others have no qualifications.—(*Ibid.*, p. 478.)

The meaning is as follows—out of the entire property of the father, the twentieth part shall be given to the eldest brother.—'*Pair*,' of cows.—'*animals with two rows of teeth*'—such as horses, mules and asses ; a chariot yoked to one of these animals.—'*Khora*,' old,—'*Kūṭa*,' hornless,—'*vaṇḍa*,' which has lost its tail ; no animal being specified, either a bullock or a horse or any such animal with these qualifications shall be the preferential share for the middle brother.—For the youngest brother, '*dhānya*,' *vrīhi* and other grains,—'*ayaḥ*' iron ;—one quadruped—bullock and the like—yoked to a cart shall be the preferential share for the youngest brother—(*Parāsharamādhava*, pp. 334-335.)

'*Pair*'—of goats or such animals ;—'*animals with two rows of teeth*'—such as horse and the like,—a chariot yoked to it ;—'*Govṛṣaḥ*,' *i.e.*, a bull with a cow ;—all this for the eldest ;—'*Khora*,' old,—'*Kūṭa*,' dwarfish,—'*vaṇḍa*,' with deformed tails ;—these shall go to the middle brother,—if there are several such animals.—The '*ewe*' and the rest shall go to the youngest.—'*The rest shall be divided equally*.'—Having declared all this, Gautama has laid down 'two shares' for the eldest brother.—(*Dāyabhāga*, p. 38.)

311. देवल] (A) पुत्राणां मध्यमो दायः समानानामपीष्यते ।
(B) ज्येष्ठस्य दशमं भागं स्याद्वृत्तस्य निर्दिशेत् ।

(A) For all equal (middle) sons, the middle heritage is intended ;—(B) *to the eldest, if righteous, the tenth part shall*

be assigned.—(*Devala.*) [Quoted in *Vivādaratnākara*, p. 472; *Vivādachintāmaṇi*, p. 201.]

NOTES

'*Madhyamo dāyaḥ*,' 'middle heritage,' *i.e.*, the twentieth part of the property.—According to *Halāyudha* and *Pārijāta*, this is to be given when the eldest is 'equipped with the Veda' and the others have no special qualifications.—According to others, however, the meaning of the first part (A) of the text is that when the eldest is equipped with the fires and the Veda, and the others also are possessed of special qualifications, then the eldest is to get the 'tenth part,' and each of the others is to get the middle heritage, *i.e.*, the 'twentieth part';—and the meaning of the second part (B) is that when the eldest is equipped with the fires and the Veda, and the others have no special qualifications, then the eldest receives the 'tenth part,' and among the other unqualified brothers, the 'fortieth part' of the property is to be divided.—(*Vivādaratnākara*, p. 472.)

This applies to cases where the eldest brother is equipped with the fires and the Veda and the others have no special qualifications;—such is the view of *Halāyudha* and *Pārijāta*.—(*Vivādachintāmaṇi*, p. 201.)

312. बृहस्पति] समवर्णासु ये जाताः सर्वे पुत्रा द्विजन्मनाम् ।
उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समम् ॥

Among the sons of twice-born persons, born of wives of the same caste, they shall give to the eldest a special share and the rest shall divide the property equally.—(*Bṛhaspati.*) [Quoted in *Dāyabhāga*, pp. 42-43.]

NOTES

See II, 221 and 301.

The 'special share' in the shape of the 'twentieth part' of the property is to be given also when the division is among uterine and non-uterine brothers; the present text states clearly that this special share is given when the division is among sons born of *several wives* of the same caste; when the division is among uterine brothers only, then the 'senior' brother gets a further advantage in this that he gets two shares instead of one.—(*Dāyabhāga*, p. 43.)

313. बृहस्पति] (A) पितुरिक्थहराः पुत्राः सर्वे एव यथांशतः ।
(B) विद्याकर्मयुतास्तेषामधिकं लब्धुमर्हति ॥

All the sons are entitled to receive their father's property, according to their proper shares; any one of them who is endowed with learning and righteous conduct deserves to

receive more.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, pp. 616, 618, 713 ; *Vivādaratnākara*, p. 484 ; *Vivādachintāmaṇi*, p. 201 ; *Vivādachandra*, 20. 2. 2 ; *Smṛtitattva II*. p. 164.]

NOTES

(A) The meaning is that the sons are equal sharers in the property as well as the debts of the father.—(*Smṛtichandrikā*, p. 616).—If the sons of a father are not 'outcasts' or under other disabilities,—and they are all equal in the matter of learning and other qualifications,—they shall share the property equally ; (B) but in case there is inequality among them, then, one who happens to be endowed with learning and other qualifications shall '*receive more*,' either through a 'preferential share' or through 'unequal division.'—(*Ibid.*, p. 618).

Excessive shares shall be given to the eldest or other brothers only when they are possessed of superior qualifications.—(*Vivādachandra*, 20. 2. 2.)

Here Bṛhaspati points out in what cases the ordinary rule of equal partition is departed from.—(*Smṛtitattva II*, p. 164.)

314. बौधायन] दशानां चैकमुद्धरेज्ज्येष्ठः । सममितरे भजेरन् ।

The eldest brother shall take one out of ten ; the others shall divide equally.—(*Baudhāyana.*) [Quoted in *Vivādachintāmaṇi*, p. 200 ; *Vibhāgasāra*, 3. 2. 6.]

NOTES

This rule applies to cases where the eldest brother is possessed of very superior qualifications ; the 'twentieth part' being given to him when his qualifications are only a little better ; and in cases where his qualifications are equal to those of others, he shall get only some little thing as a present to satisfy him.—(*Vivādachintāmaṇi*, p. 200.)

315. बृहस्पति] तत्पुत्रा विषमसमाः पितृभागहराः स्मृताः ।

If some of the brothers have died before partition, their sons—equal or unequal in number—have been declared to be entitled to receive their father's shares.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 646 ; *Parāsharamādhava*, p. 337.]

NOTES

This text sets forth the corollary that follows from the general rule that 'shares shall be allotted according to the father's.'—'*Tatputrāḥ*,' the sons of each of those brothers who have died (before partition),—'*viṣamasamāḥ*,' equal or unequal in number,—the number of the sons of one brother being

larger or smaller than, or equal to, that of those of the other,—receive only the shares of their respective fathers. That is to say, one of the dead brothers has one son, another two, and a third several,—in this case, just as the one son shall receive his father's share, so will the two together receive their father's share, and so will the several sons together receive what would have been the share of their father.—(*Smṛtichandrikā*, p. 646.)

Though grandsons, from their birth, have a claim upon the grandfather's property which is equal to that of their father, yet whether they be one or two or three or four, they receive only the one share that would have been their father's.—(*Parāsharamādhava*, p. 337.)

316. नारद] (A) ज्येष्ठायांशोऽधिको देयः कनिष्ठायावरः स्मृतः
[*v.l.*, श्रेष्ठाय तु वरः स्मृतः] ।
समांशभागाः शेषाः स्युरप्रत्ता भगिनी तथा ॥
(B) क्षेत्रजेषु तु पुत्रेषु तद्वज्जातेषु धर्मतः ॥

(A) To the eldest, more shall be given ; *to the youngest, less* [*v.l., to the superior, some good thing*] ; the others shall be equal sharers ; as also the unmarried sister.—(B) The same shall be done in the case of legally *soil-born* sons.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 479 ; *Vivādachandra*, 19. 2–7 ; *Vīramitrodaya*, p. 561.]

NOTES

(A) The author of the *Prakāsha* has read, '*shreṣṭhāya tu varaḥ smṛtaḥ*' in place of '*Kaniṣṭhāyāvaraḥ smṛtaḥ*' and explained the first line to mean as follows :—First of all '*more,*'—*i.e.*, two shares—shall be given to the eldest brother ; then to one who may be '*shreṣtha,*' 'superior,'—*i.e.*, specially efficient in household-affairs,—'*vara*'—'some good thing,' shall be given.—'*The unmarried sister also,*' shall be an equal sharer.—This is the rule applicable to the case of 'legitimate sons' ; the same is made applicable in (B) to the case of 'soil-born sons' also, provided that these latter are '*jateṣu dharmataḥ,*' 'born legally,' *i.e.*, born of a soil (wife) made over by the husband, suffering from impotence or other disabilities, to a *sakulya*.—It might be urged against this that, inasmuch as there can be only one 'legally born'—*soil-born* son, the present rule could not apply to his case.—But the answer to this would be that the rule will apply to cases where there are 'soil-born' *twins*.—(*Vivādaratnākara*, p. 480.)

Here Nārada speaks of an unequal division, without a 'preferential share.'—(*Vīramitrodaya*, p. 561.)

317. बृहस्पति] जन्मविद्यागुणज्येष्ठो द्व्यंशं दायादवाप्नुयात् ।
समांशभागिनस्त्वन्ये तेषां पितृसमस्तु सः ॥

One who is senior in regard to birth, learning and other qualifications should receive two shares out of the inheritance; the others should be equal sharers; the former is like a father to these.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 620; *Vivādaratnākara*, p. 480; *Vivādachintāmaṇi*, p. 201; *Vivādachandra*, 20. 2–4; *Parāsharamādhava*, p. 335; *Dāyabhāga*, p. 42; *Vīramitrodaya*, p. 569.]

NOTES

This text lends support to the view that 'seniority' does not mean *older age* only, but also superiority in regard to learning and other qualifications.—(*Smṛtichandrikā*, p. 620.)

Here Bṛhaspati explains to what sort of 'eldest' brother excessive shares are to be given. –(*Vivādaratnākara*, p. 480.)

This rule applies to cases where the eldest brother is possessed of every superior qualification and is able to protect his brothers like a father.—(*Vivādachintāmaṇi*, p. 201.)

This shows that a brother is not to be regarded and treated as 'eldest' only because of his being eldest in age.—(*Vivādachandra*, 20. 2–4.)

The eldest brother is entitled to 'two shares' not only by virtue of his being senior *in age*.—The title to 'two shares' cannot be regarded as referring to such property as the eldest brother may have acquired by himself; as in that case, there would be no point in the mention of 'learning and other qualities.' This rule regarding the 'two shares' applies to only those cases where the division is among *uterine* brothers; where the division is among uterine and non-uterine brothers, the 'eldest' is to receive only 'the twentieth part' as his preferential share; as has been declared by Bṛhaspati, in the text—'*Samavarṇāsu yē jātāḥ, etc.*'—(*Dāyabhāga*, p. 42.)

318. गौतम 28. 11–13.] एकैकं वा धनं रूपवत् काम्यं पूर्वतः पूर्वो लभेत दशतः पशूनाम् । नैकशफद्विपदानाम् ।

Let them each take one kind of property, according to seniority, what they desire,—ten head of cattle; but no one shall take ten one-hoofed animals or ten slaves.—(*Gautama*, 28. 11—13.) [Quoted in *Vivādaratnākara*, p. 479.]

NOTES

'*Ten*'—animals of one kind,—each elder brother shall take—'*one-hoofed animals*'—horses and the like;—'*bipeds,*' women, (slaves); from among these two classes, they will not take ten —This rule applies to cases where there is much wealth and all the brothers are possessed of equal qualifications.—(*Vivādaratnākara*, p. 479.)

319. बौधायन] असति पितरि चतुर्णां वर्णानां गोऽश्वाजावयो ज्येष्ठांशो यथासङ्ख्येन ।

On the death of the father, among sons, the eldest son shall receive either a cow or a house or a goat or a sheep respectively, according as he belongs to one or the other of the four castes.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 472.]

NOTES

This applies to cases where the eldest brother is possessed of poor qualifications.—(*Vivādaratnākara*, p. 472.)

320. गौतम] प्रतिमातृ वा स्ववर्गे भागविशेषः

The preferential share shall be allotted in accordance with the relationship of each of the mothers —.(*Gautama.*) [Quoted in *Vivādaratnākara*, p. 475.]

NOTES

The meaning is as follows :—In a case where there are several wives belonging to the same caste, and each of them has an equally large number of sons,—as it would be impossible to make a division of the property in reference to each of the numerous sons,—the division shall be made in reference to their mothers : and in each group made up of the sons of one mother, the eldest shall receive the preferential share in the shape of the 'twentieth part' of the property. This is what has been declared by Bṛhaspati in the text—'*Yadyekajāta bahavaḥ samānā jātisaṅkhyayā sāpatnāstairvibhaktavyam mātṛbhāgena dharmataḥ.*'—(*Vivādaratnākara*, p. 475.)

321. अर्थशास्त्र II, pp. 36-37.] (A) एकस्त्रीपुत्राणां ज्येष्ठांशः—
ब्राह्मणानामजाः क्षत्रियाणामश्वाः वैश्यानां गावः शूद्राणामवयः । काणलिङ्गास्तेषां मध्यमांशः । भिन्नवर्णाः कनिष्ठांशः ।

(B) चतुष्पदाभावे रत्नवर्जानां द्रव्याणां दशानामेकं भागं ज्येष्ठो हरेत्—इत्यौशनसो विभागः ।

(C) पितुः परिवापात् यानमाभरणं च ज्येष्ठांशः शयनासनं भुक्तकांस्यं च मध्यमांशः—कृष्णधान्यायसं गृहपरिवापो गोशकटं च कनिष्ठांशः । शेषद्रव्याणामेकद्रव्यस्य वा समो विभागः ।

(D) मानुषहीनो ज्येष्ठः तृतीयमंशं ज्येष्ठांशाल्लभेत—चतुर्थमंशमन्यायवृत्तिर्निवृत्तधर्मकार्यो वा । कामाचारः सर्वं जीयेत । तेन मध्यकनिष्ठौ व्याख्यातौ । तयोर्मानुषोपेतो ज्येष्ठांशादर्धं लभेत ।

(A) Among sons of the same mother, there shall be a preferential share for the eldest : goats for the Brāhmaṇa, horses for the Kṣattriya, cows for the Vaishya, sheep for the Shūdra.—Among the animals, the one-eyed shall go to the middle brother, those of variegated colours shall go to the youngest.—(B) If there are no quadrupeds, the eldest shall take one out of every ten articles of the same category, with the exception of gems,—such is the division according to Ushanas.—(C) From among the personal belongings of the father, the conveyance and the ornament shall be the share of the eldest ; bedstead, set pearls and articles of bell-metal, of the middlemost ; black grain, articles of iron, household requisites and bullock-cart, to the youngest.—All other articles taken together—or each class of articles taken separately,—shall be divided equally.—(D) If the eldest is devoid of manly qualities, he shall receive only a third part of the preferential share allotted to the eldest ; if he is addicted to unrighteous ways or omits to perform his religious duties, then he is to receive only a fourth part ; if he is a libertine, he shall forfeit the whole.—The same rule applies to the middlemost and the youngest (in regard to their preferential shares) ; if either of these are possessed of manly qualities, he shall receive half of the preferential share allotted to the eldest (and forfeited by him).—(*Arthashāstra* II, pp. 36-37.)

322. कात्यायन] यथा यथा विभागाप्तं धनं यागार्थतामियात् ।
तथा तथा विधातव्यं विद्वद्भिर्भागगौरवम् ॥

The learned should increase the value of a man's share in proportion to his employing the wealth obtained by partition in the performance of sacrifices.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 618 ; *Parāsharamādhava*, p. 335.]

NOTES

A distinction is made in the allotment of shares on the basis of the person's adherence to his duties, and also on the value of the property to be given.—(*Smṛtichandrikā*, p. 618.)

323. पुराण] ऊढायाः पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा ।
कलौ पञ्च न कुर्वीत भ्रातृजायां कमण्डलुम् ॥
सङ्ग्रहकार] यथा नियोगधर्मो नो नानुबन्ध्यावधोऽपि वा ।
तथोद्धारविभागोऽपि नैव सम्प्रति वर्तते ॥

The remarriage of the woman already married, the preferential share for the eldest, cow-killing, recourse to the sister-in-law, and recourse to the water-pot,—these five should not be done in the Kali-age.—(*Purāṇa.*) 'Just as the practice of Niyoga and the killing of the Anubhandhyā cow, so also partition with preferential shares, is not followed at the present time.—(*Sangrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 620 ; *Vīramitrodaya*, p. 564.]

NOTES

'*Preferential share for the eldest*'—on the basis of age or learning and such other qualifications.—'*Cow-killing*,' as part of the *Anubandhyā* rite.—'*Water-pot*'—taking of the water-pot by the householder.—Though the practice of allotting preferential shares is sanctioned by the texts, it is forbidden for the present age and is not adopted by cultured people.—(*Smṛtichandrikā*, pp. 620—622.)

'*Remarriage, etc.*'—'*Niyoga*'—having recourse, with the permission of elders, to the widowed sister-in-law, or to one betrothed to a man.—'*Cow-killing*,' the rite of killing the *Anubandhyā* cow dedicated to Mitra-Varuṇa —(*Vīramitrodaya*, p. 564.)

324. मनु 9. 213.] यो ज्येष्ठो विनिकुर्वीत लोभाद् भ्रातॄन् यवीयसः ।
सोऽज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिः ॥

If an eldest brother, through avarice, defrauds the younger ones, he shall lose his 'seniority' and his share and shall be punished by the king.—(*Manu*, 9. 213.) [Quoted in *Mitākṣarā*, p. 672 ; *Vivādaratnākara*, p. 478 ; *Vivādachintāmaṇi*, p. 200 ; *Parāsharamādhava*, p. 383 ; *Vīramitrodaya*, p. 706 ; *Vyavahāramayūkha*, p. 131.]

NOTES

'*Defrauds*'—cheats them out of their share in the property ; as also of the rewards and honours that may be conferred by the king.—'*Loses his seniority*,'—is to be treated as an ordinary 'kinsman' [*i.e.*, he shall not be obeyed and respected like the father—says *Medhātithi* on *Manu*, 9. 110 ;

this, however, does not preclude *all* that is due to him as the eldest brother. He loses also his 'share,'—*i.e.*, the preferential share due to him as the eldest brother.—'*Punished,*'—as no special form of punishment has been prescribed, the man shall be reprimanded, or censured, or fined, in accordance with the exact nature of his offence.—(*Medhātithi.*)

'*Vinikurvīta,*'—tries either to deprive them of their share or to decrease it.—'*Ajyeṣṭhaḥ,*' not entitled to be respected like the eldest brother.—Inasmuch as the text specially mentions the 'eldest,' *if* the younger brothers were to covetously behave in this manner, they would not lose their share.—(*Sarvajñanārāyaṇa.*)

If an eldest brother cheats his younger brothers, he becomes deprived of the honour due to him by virtue of his being the eldest, as also of the preferential share; he also becomes subject to punishment at the hands of the king.—(*Kullūka.*)

'*Vinikurvīta,*' turn out of the house.—'*Ajyeṣṭhaḥ,*' deprived of the honour due to him as the eldest.—'*Abhāgaḥ,*' not entitled to share the paternal property.—(*Rāghavānanda.*)

This text lays down the circumstances under which the eldest brother becomes deprived of his share.—'*Vinikurvīta,*' set aside.—(*Nandana.*)

If the eldest brother, through avarice, *oppresses* the younger brothers, he ceases to deserve the respect due to the eldest, and also to be entitled to the preferential share.—(*Rāmachandra.*)

In this text Manu has been understood to make the misappropriation of joint property an offence only for the eldest brother, not for the younger ones. But this is not right; because just as it is an offence for the eldest brother who is in place of the 'father,' so it is also for the younger ones who are in the position of 'sons.' This has been clearly stated in the text—'*Yo vai bhāginam nudate,* etc.'; where the said offence is not restricted to the eldest brother only.—(*Mitākṣarā*, p. 672.)

'*Vinikurvīta,*' defrauds.—'*Ajyeṣṭhaḥ,*' no longer to be respected as the eldest.—(*Vivādaratnākara*, p. 478.)

What is meant is that when it is wrong for the eldest brother, who is his own master, to misappropriate common property,—it is very much more so for the younger brothers who are dependent upon the eldest brother; it does not mean that it is wrong for the eldest only.—(*Parāsharamādhava*, pp. 383-384.)

It is true that in this text Manu appears to imply that misappropriating of common property is wrong for the eldest brother only,—yet what is really meant is that when it is wrong for the eldest brother, who is in the position of the father, it is much more so for the younger brothers who are dependent upon him.—(*Vīramitrodaya*, p. 706.)

The term '*eldest brother*' stands for coparceners in general;—the meaning being that when it is wrong for the eldest, how much more should it be for the younger ones?—(*Vyavahāramayūkha*, p. 131.)

325. मनु 9. 125.] सदृशस्त्रीषु जातानां पुत्राणामविशेषतः ।
न मातृतो ज्यैष्ठ्यमस्ति जन्मतो ज्यैष्ठ्यमुच्यते ॥

Among sons born of equal mothers,—if there is no other distinction,—there is no seniority on account of their mothers; seniority is declared to be by birth only.—(*Manu*, 9. 125.) [Quoted in *Vivādachintāmaṇi*, p. 200; *Vivādachandra*, 19. 2–7; *Vivādaratnākara*, pp. 476-477; *Dāyanirṇaya*, 19. 2–6.]

NOTES

'*Equal*'—of the same caste—(*Medhātithi.*)

What is said here is in regard to saluting, etc.; the meaning being that one who is senior in age is to be saluted by the junior.—(*Sarvajñanārāyaṇa.*)

Among sons born of mothers of the same caste, as there is no distinction due to difference in caste,—seniority has not been held to be due to the order of the wives; only those who are senior in age are to receive the 'preferential share.'—Thus, inasmuch as 'seniority on account of mothers' is found to be both affirmed (in Manu, 9. 124) and denied (in the present verse), this has to be taken as a case of option,—the option being determined in each case by the presence or absence of exceptional qualifications; *i.e.*, one possessed of superior qualifications is to be regarded as the 'senior.' It is for this reason that the 'preferential share' has been declared to be given to the eldest brother only if he is possessed of superior qualifications, by Bṛhaspati in the text—'*Janmavidyāguṇajyeṣṭho, etc.*'—(*Kullūka.*)

In verses 122, 123 and 124 Manu has propounded the views of some people regarding partition; he now (with this verse) proceeds to set forth his own views; and to that end he explains what is meant by '*eldest*,' 'senior.' Among sons born of mothers of the same caste, the seniority qualifying for the 'preferential share' depends upon priority of birth, not upon the simultaneity or sequence in the marriage of the mothers.—Kullūka has called this a case of option; Medhātithi calls it a mere 'commendatory declaration.' In fact priority of birth is the determining factor.—(*Rāghavānanda.*)

This verse and the next are meant to show that the 'seniority' due to the brothers hold good only in regard to the partition of property, not in other cases.—'*Equal mothers*,' mothers of the same caste as the father.—(*Nandana.*)

In a case where a man has wives belonging to different castes, the son born of the one belonging to the same caste as the husband is the 'senior' even though he may be born later.—(*Vivādachintāmaṇi*, pp. 199-200.)

Some people (Medhātithi and the author of the *Prakāsha* among them) have held the view that "verses 122—124 have stated the *Pūrvapakṣa view* (held by others), and Manu has declared his own view in this verse (125); otherwise there would be an inconsistency on the part of Manu."—But this is not acceptable, because it has been already explained that the diversity in the methods of division is due te differences in the qualifications and conduct of the brothers. This is also the correct explanation; for, so long as a text can be interpreted as the author's own view, it cannot be right to take it as representing another view. Further *Lakṣmīdhara* and also the *Pārijāta* have accepted the view that the preferential share for *the younger brother born of the senior wife* is due to him by reason of his 'seniority.'—(*Vivādaratnākara*, pp. 476-477.)

'*Jyeṣṭhatā*,' seniority,' consists not only in being born first; because it has been declared that '*seniority* is due to qualifications and age.'—(*Vivādachandra*, 19. 2—7.)

'Seniority' among brothers rests upon the seniority of the mother; and when there are several sons born of mothers of the same caste, the 'seniority' goes by age.—(*Dāyanirṇaya*, 19. 2—6.)

326. मनु 9. 126.] जन्मज्यैष्ठ्यस्य [*v.l.*, ज्येष्ठेन] चाह्वानं सुब्रह्मण्यास्वपि स्मृतम्।
यमयोश्चैव गर्भेषु जन्मतो ज्येष्ठता मता ॥

In the *Subrahmaṇyā* text also, the invocation has been declared as to be done by the son who is eldest by birth. *Between sons conceived in the wombs as twins also, seniority has been declared to be dependent upon birth.*—[Or, *Between twins, seniority is determined by conception in the womb.*]—(*Manu*, 9. 126.) [Quoted in *Vivādaratnākara*, p. 477; *Vyavahāramayūkha*, p. 97.]

NOTES

This is a commendatory text, in support of the view that seniority is determined by birth.—'*Subrahmaṇyā*' is the name of a text recited by the Chhandogas at the *Jyotiṣṭoma* Sacrifice. It occurs in the Aitareya Brāhmaṇa, 6. 3.—In connection with this *mantra*, the 'eldest son' addresses the invocation to the father—'I (the eldest son, naming himself) am making this offering.' Thus it is seniority *by birth* that is real 'seniority'; the 'seniority' based upon the position of the mother is only secondary.—'*Between sons conceived as twins*,'—*i.e.*, those that have been conceived simultaneously,—seniority is determined by birth.—(*Medhātithi*.)

This only reiterates on ritualistic grounds for what has been asserted in the preceding verse on grounds of reason.—(*Sarvajñanārāyaṇa*.)

The '*Subrahmaṇyā-mantra*' is addressed at the *Jyotiṣṭoma* Sacrifice, for the invocation of Indra; and this invocation is done by the 'eldest son' who names the father—'The father of *so and so* (naming himself) is making this offering.'—Between twins conceived at the same time, seniority is determined by the order in which they are born.—The plural number in '*garbheṣu*' is in view of the plurality of wives.—(*Kullūka*.)

What has been said in the preceding verse is supported by the Shruti also . . . . . . For this same reason, seniority belongs to the one born of the first emission of the semen. What is meant is that the son that was conceived through the first emission is to be regarded as the elder, even though at birth he may have come out of the womb later. If this were not the meaning, then the plural number in the word '*garbheṣu*' would have no sense.—Similarly, where two wives have conceived at about the same time, seniority belongs

to the child that has been conceived earlier, not to that which may, by chance, happen to be born earlier,—in the eighth month of pregnancy, for instance.—(*Rāghavānanda.*)

Between twins who have been conceived at the same time.—(*Nandana.*)

Between twins, seniority is determined by conception in the womb.—(*Rāmachandra.*)

The '*Subrahmaṇyā*' is a mantra recited by the *Chhandogas* at the *Jyotiṣṭoma* Sacrifice; at this the invocation is addressed by mentioning the father by the name of his eldest son.—(*Vivādaratnākara*, p. 477.)

Manu has declared here the seniority, between twins, of one who comes out of the womb first. In *Piṇḍasiddhi* and other medical works, the one born later has been declared to be the elder; so also in the *Bhāgavata*—'There are two embryos, and in delivery the order is reversed, etc., etc.,'—where also the one born later is declared to be the elder. But this view is unacceptable, being contrary to the present text of Manu.—(*Vyavahāramayūkha*, pp. 97-98.)

327. देवल] बहिर्वर्णेषु चारिभ्याद् यमयोः पूर्वजन्मनः ।
यस्य जातस्य समये [*v.l.*, यमयोः] पश्यन्ति प्रथमं मुखम् ।
सन्तानः पितरश्चैव तस्मिन् ज्यैष्ठ्यं प्रतिष्ठितम् ॥

Among sons born of wives belonging to different castes,—and between twins,—the progeny, the forefathers and seniority rest upon that son whose face they see first.—(*Devala.*) [Quoted in *Vivādaratnākara*, p. 477; *Vivādachintāmaṇi*, p. 199.]

NOTES

Among sons born of wives belonging to castes other than that of the husband,—the '*santāna*' (progeny), *pitaraḥ* (the forefathers) and '*Jyaiṣṭyam*' (seniority) rest upon that son whose face the father sees first.—But if a son is born, even subsequently, of a wife belonging to the same caste as the husband, then this son is the 'senior,' even though born later.—(*Vivādachintāmaṇi*, p. 199.)

II (3) (f)

SHARES FOR SISTERS

328. मनु 9. 118.] स्वेभ्योंऽशेभ्यस्तु [*v.l.*, स्वाभ्य : स्वाभ्यस्तु] कन्याभ्यः प्रदद्युर्भ्रातरः पृथक् ।
स्वात् स्वादंशाच्चतुर्भागं पतिताः स्युरदित्सवः ॥

Of their own shares, each of the brothers shall severally give the fourth part to the unmarried girls [*v.l.*, to the unmarried girls of the same caste, the brothers shall each severally give the fourth part of his share] ; those not inclined to give would become degraded.—(*Manu*, 9. 118.) [Quoted in *Aparārka*, p. 731 ; *Mitākṣarā*, p. 665 ; *Vivādaratnākara*, p. 494 ; *Vivādachintāmaṇi*, p. 209 ; *Smṛtichandrikā*, p. 626 ; *Parāsharamādhava*, p. 345 ; *Dāyabhāga*, p. 69 ; *Vīramitrodaya*, p. 580 ; *Vibhāgasāra*, 6. 2—4 ; *Dāyanirṇaya*, 21. 2—5.]

NOTES

The term '*Kanyā*' is, as a rule, used in the sense of the *unmarried girl* ; in another Smṛti-text, the term '*anūḍhā*,' 'unmarried' is actually used. The share therefore that is laid down should be taken as pertaining to the unmarried daughter.—'Of the same *caste*' (reading '*svābhyaḥ svābhyaḥ*' for '*svebhyaḥ svebhyaḥ*.)'—Each of the brothers should give to the sister of the same caste as himself the fourth part of his own share ; that is to say, in a case where the father has left several unmarried daughters, the share allotted to each of them should be the fourth part of the portion of the brother belonging to the same caste as himself. The upshot therefore comes to this that three parts of the property shall be taken by the sons and the fourth part by the daughters .... According to some people the only benefit to which the girl is entitled is that her marriage should be performed ; as is the custom also.—But the direct assertion of the Smṛti is definitely more authoritative than custom ; moreover, the custom referred to is by no means universal.—Another view that has been held is that the girl shall receive just enough of property to suffice for the performance of her marriage, and not definitely the *fourth part* of a share.—But this would make the rule indefinite ; there being no definite rule as to what is required for the performance of the marriage.—Then again, we have Yājñavalkya's text (2. 124) laying down that 'the brothers who have had their sacramental rites already performed should perform the same for the unmarried girls, *and* sisters should receive from their brothers the fourth part of their

shares.'—The term '*bhrātaraḥ*,' 'brothers,' in the present text has been *taken as standing for the uterine* brothers, as is clearly *indicated by the term* '*severally.'—But if that were so, then the girl that has no uterine* brother would have to go without a share in the property; nor could there be any chance for any dowry being provided for her.—It might be argued that her *step-brother* would provide for her; but in the absence of such a rule, he may not do it.—In reality, the term 'brother' is found to be used in the sense of *sons of the same father*, even those of several mothers.—As regards the term '*Pṛthak*,' 'severally,' in the text,—it has been added in order to guard against the possible interpretation that the fourth part of the share of a single brother shall be divided among all the sisters.—(*Madhātithi.*)

The sons of the *Brāhmaṇa* wife shall give to the daughters of the Brāhmaṇa wife, the sons of the *Kṣattriya* wife shall give to the daughters of the Kṣattriya wife, the fourth part of their respective shares. Even in cases where there are several daughters, the division shall be on the basis of the said principle. In a case where there are several brothers, and only one sister, all the brothers shall set apart for her just enough to make up for her what would be equal to the fourth part of the share allotted to each brother.—(*Sarvajñanārāyaṇa.*)

If there are four brothers belonging respectively to the four castes, Brāhmaṇa, Kṣattriya, Vaishya and Shūdra,—and they have inherited the property in the proportion laid down in Manu (9. 153),—each of them shall give the fourth part of his share to the unmarried sister belonging to the same caste as himself. That is to say, each brother shall give to his uterine sister, the fourth part of the property for the purpose of her marriage. If a girl has no uterine brother of her own, she should have her marriage performed by her step-brothers belonging to inferior or superior castes. Says Yājñavalkya (2. 124)—'*Asaṃskṛtāstu, etc.*'—If the brothers be not inclined to give the fourth part of their shares to the sisters, then, '*they would become degraded.*'—It follows from this that the fourth part of one's share is to be given by the brothers to their uterine sisters, also in cases where there are several brothers and sisters of the same caste, but born of different mothers.—(*Kullūka.*)

This text lays down the rule governing cases where there are daughters also.—The brothers should give the fourth part of their share to their sisters belonging to the same caste as themselves, for the purposes of their marriage; as has been said by *Yajñavalkya* (2. 124).—If there are three brothers who have had three shares among them, each of those shares is to be divided into four parts, and one of these four parts is to go to the sister.—This refers to cases where there are several mothers.—(*Rāghavānanda.*)

Each of the divided brothers shall give to each of their unmarried sisters—the fourth part of his share.—(*Nandana.*)

'*Degraded*,'—*i.e.*, not entitled to receive a share in the property.—(*Rāmachandra.*)

The two words '*svābhyaḥ anshābhyaḥ*' refer only to the sons' shares; the plural number has been used in reference to cases where there may be several girls.—The repetition '*svāt svāt*' is with reference to girls belonging to several castes. The sense is as follows:—In a case where a Brāhmaṇa has wives of all the castes,—and each of those has several daughters,—the daughter

of the Brāhmaṇa wife shall receive the fourth part of the share that would go to the Brāhmaṇa son; similarly, the daughter of the Kṣattriya wife shall receive the fourth part of the share that would go to the Kṣattriya son.—This however is not 'inheritance,' '*dāya*.'—(*Aparārka*, p. 731.)

The meaning of this is as follows:—The brothers belonging to the Brāhmaṇa, Kṣattriya, Vaishya and Shūdra castes shall give to their sisters of the same Brāhmaṇa, Kṣattriya, Vaishya and Shūdra castes, the fourth part of the share that would be allotted to themselves in accordance with the rule assigned in Manu (9. 153).—'Four parts to the Brāhmaṇa, etc., etc.,'—to the sons of the various castes. It does not mean that the brother is to take out the fourth part from his own share and give it; what is meant is that to each sister shall be given the fourth part of the share that has been assigned to a son of the same caste.—It will not be right to urge that "no significance attaches to the specific mention of the *fourth part*, all that is meant is that just that amount of wealth shall be given as would suffice for the performance of her marriage."—Because both the Smṛti-texts (Manu and Yājñavalkya) specifiy 'the fourth part' and also declare that by not giving this fourth part, the brother would incur a grave sin.—Some people have objected that—"if this rule were strictly followed and the definite fourth of a share were assigned to each sister, then in cases where there would be only one sister and several brothers, she would receive a large property, while in those where there are a single brother and several sisters, the son would have nothing at all."—But no such contingency would arise under the rule as explained above; we have shown that it is not meant that the brother shall take out the fourth part of the portion that has been assigned to himself; so that there would be no such contingencies as have been pointed out.—For these reasons, the right explanation is that given by Asahāya, Medhātithi and others, and not the one given by Bhāruchi.—Thus we conclude that after the father's death, the daughter also is entitled to a share; but if the father has already given to her some property, she gets that (and no further share—adds the *Bālambhaṭṭī*).—(*Mitākṣarā*, pp. 665—667.)

The meaning of this text is not that 'the brother shall take one-fourth part of his own share and give it to the sister,'—but that to each girl shall be allotted the fourth part of the share that would go to a son of the same caste. Thus the sense comes to be that out of the given total of the 'four shares' (that have been prescribed for the Brāhmaṇa son)—or the 'three shares' (that have been prescribed for the Kṣattriya son)—the 'fourth part' shall be given to the Brāhmaṇa girl—or the Kṣattriya girl (respectively).—Inasmuch as the 'fourth part of a share' is found specifically mentioned in several texts, it is the 'fourth part' that shall be given; though the purpose of the gift is that her marriage may be performed.—This same view has been held by the *Kalpataru*, the *Mitākṣarā* and the *Prakāsha*.—But Halāyudha and others have held the view that the 'fourth part' is only by way of example; the sense is that that much shall be given as would suffice for her marriage. This appears to be the right view; as (whatever the 'fourth part' may be) it is absolutely essential that the girl should be married.—(*Vivādaratnākara*, p. 494.)

The meaning is that the brothers shall take out of their own shares the fourth part and give it to the sisters of the same caste as themselves.—No significance is meant to be attached to 'the fourth part'; that much shall be

given as would suffice for the performance of their marriage ; in accordance with the declaration of Viṣṇu to the effect that—'The brothers shall perform the marriage of the girls, in accordance with their means'—'*anūḍhānām tu kanyānām, etc.*'—This same view has been held by the *Ratnākara* and others.—(*Vivādachintāmaṇi*, p. 209.)

The clear meaning of the words as indicated by the repetition '*svāt svāt*' is that—'The brothers shall give to the girls as many *quarter-shares* as there may be full shares of the brothers';—but seeing that the text pertains to cases where there are several girls, there is no such discrepancy as would be involved if a single sister were to receive the fourth part of the shares of all the brothers. What is meant is that the fourth part of the whole property (constituting the shares of all the brothers) is to be divided equally among the sisters.—The text of Viṣṇu—'*Anūḍhāyām, etc.*' refers to cases where there is only one son, and hence there is no question of *partition* at all ; or it may be taken as referring to a case where the brothers are living together.—The term '*kanyā*' here stands for all such children of the father as have not had their sacramental rites performed already.—(*Smṛtichandrikā*, pp. 626-627.)

Each of the brothers belonging to the Brāhmaṇa and other castes shall give to each of their sisters belonging to the Brāhmaṇa and other castes, the fourth part of the share that has been assigned to the sons of the several castes. That is to say—(*a*) If a Brāhmaṇa has only one wife of the Brāhmaṇa caste, from whom he has one son and one daughter,—the son shall divide the paternal property into *two* parts, then divide one of these two parts into *four* parts,—one of these four parts he shall give to his sister, and all the rest he shall take for himself.—(*b*) If there are two sons and one daughter—the paternal property shall be divided into *three* parts,—one of these three shall be divided into *four* parts,—one of these three parts shall be given to the daughter, and all the rest shall be divided equally between the two brothers.—(*c*) If there be one son and two daughters,—the paternal property shall be divided into *three* parts,—one of these three parts shall be divided into *four* parts,—two of these four parts shall be given to the two daughters, and all the rest shall go to the son.—In this manner shall the allotments be made among brothers and sisters belonging to the same caste.—(*d*) If the Brāhmaṇa father has left one Brāhmaṇa son from his Brāhmaṇa wife and a Kṣattriya daughter (from his Kṣattriya wife),—the paternal property shall be divided into *seven* parts,—three of these parts, which would have gone to the *Kṣattriya* son, shall be divided into four parts,—and one of these four parts shall be given to the Kṣattriya daughter and all the rest shall be taken by the Brāhmaṇa son.—(*e*) When there are two Brāhmaṇa sons, and one Kṣattriya daughter,—the paternal property shall be divided into eleven parts,—three parts out of these shall be divided into four parts,—one of these four parts shall be given to the Kṣattriya daughter and all the rest shall be divided between the two Brāhmaṇa sons.—Such is the explanation given by Medhātithi, which has been approved also by Vijñāneśvara. *Bhāruchi* however has explained the term '*fourth part*' as meant to stand for such wealth as would be necessary for the performance of marriage , and hence he does not accept the view that the unmarried daughter is entitled to *inheritance*. This idea is approved by the author of the *Chandrikā* also.—(*Parāsharamādhava*, pp. 345-346.)

The use of the term '*pradadyuḥ*,' 'should give,'—and the declaration that by not giving, the brother incurs sin—imply that the girl receives the said 'fourth part,' not as a matter of right (but as a gift); because one rightful claimant does not 'give' a share to another rightful claimant.—(*Dāyabhāga*, p. 69.)

This text does *not* mean that every one of the brothers is to take out the fourth part of his share and give that to each of the sisters. If this were done, then a sister who had several brothers would be extremely rich, and a brother who had several sisters would be reduced to penury. Hence all that is meant is that the sisters shall receive just enough to enable them to get married.—Such is the explanation given by the *Ratnākara*, the *Chintāmaṇi* and others; and in support of this view they have put forward Viṣṇu's text—'Of the unmarried daughters they shall perform the marriage in accordance with their means.'—This view, however, is not right. Because according to both the Smṛtis (Manu and Yājñavalkya) the withholding of the shares from the sisters would be iniquitous; further, the sin incurred in not being inclined to give them their shares has been spoken of as distinct from that incurred in not performing their marriage.—For these reasons, Medhātithi, the *Mitākṣarā* and others have propounded the following explanation:—The sister is to receive the fourth part of the share that has been ordained for the brother of the same caste; for instance, 'four shares' having been ordained for the Brāhmaṇa's Brāhmaṇa son; the fourth part of these 'four shares' shall go to his Brāhmaṇa daughter; and so on with the daughters of other castes. For instance—(*a*) If a Brāhmaṇa has one wife, who has one son and one daughter,—the entire paternal property shall be divided into *two* parts,—one of these two parts shall be divided into *four* parts,—one of these four parts shall be given to the sister and all the rest shall be taken by the son.—(*b*) In a case where the same Brāhmaṇa couple have two sons and one daughter,—the entire property shall be divided into three parts,—one of these three parts shall be divided into four parts,—one of these four parts shall be given to the sister and all the rest shall be equally divided between the two brothers.—(*c*) Where there are one son and two daughters, the property shall be divided into three parts,—one of these three parts shall be divided into four parts,—and two of these four parts shall be given to the two sisters and the rest shall be taken by the son.—Thus it follows that in every case the sister is to receive the fourth part of the share that would go to her brother of the same caste.—(*d*) In a case where the Brāhmaṇa has one son from his Brāhmaṇa wife and one daughter from his Kṣattriya wife,—the paternal property shall be divided into seven parts,—the three parts due to a Kṣattriya son shall be divided into four parts,—one of these four parts shall go to the Kṣattriya sister, and the rest shall be taken by the Brāhmaṇa son.—(*e*) In a case where there are two Brāhmaṇa sons and one Kṣattriya daughter,—the paternal property shall be divided into eleven parts,—the three parts due to a Kṣattriya son shall be divided into four parts,—and one of these four parts shall go to the Kṣattriya daughter and the rest shall be divided between the two Brāhmaṇa sons.—(*Vīramitrodaya*, pp. 581-582.)

The elder brothers who have had their sacraments performed already should perform them for all their brothers for whom they have not been performed; if there is no property left by the father for this purpose, they should

do this even with the wealth acquired by themselves. This, however, need not delay the partition of the property ; all that is meant is that provision shall be made for the sacraments. Similarly, towards the expenses of the marriage of the unmarried sisters each brother shall give a quarter of his share either out of the paternal property or out of his own property.—'*Svebhyaḥ*,' *i.e.*, from the share of the brothers belonging to the same caste as the sisters.—The mention of the 'brothers' is only by way of illustration ; it stands for anyone who has inherited the property of the girl's father ; the performance of the marriage being something that the father ought to have done ; and also because the girl also has a share in the property—say some.—It is not necessary that each brother must surrender a quarter of his share ; all that is meant is that necessary provision should be made for the marriage, as Viṣṇu has declared that 'the unmarried daughters should be married according to one's wealth.'—(*Vibhāgasāra*, 6. 2—5.) According to some people the 'fourth part' is to be given in cases where the property inherited is a large one.—(*Ibid.*, 6. 2—11.)

'*Fourth part.*'—This stands for just that much which may be necessary for the marriage of the sister ; this is clear from Viṣṇu's text (see 341 below.)—(*Dāyanirṇaya*, 21. 2.—7.)

329. नारद] आसंस्काराद्धरेद् भागं परतो बिभृयात् पतिः ।

Until marriage has been performed, she shall receive a share ; after marriage she shall be supported by her husband.—(*Nārada.*) [Quoted by *Medhātithi* on *Manu*, 9. 118.]

NOTES

See III, 67.

What this text means is as follows :—When the property left for the brother and sister is small, and the fourth part of the brother's share is not sufficient for the sister's maintenance,—in such a case the sister shall enjoy a share equal to her brother's, until her marriage ; after which she shall receive the fourth part of the share, even though it be small ; and she shall be supported by her husband.—(*Medhātithi* on *Manu*, 9. 118.)

330. स्मृत्यन्तर] भ्रातृभ्योंऽशचतुर्भागं तत्र कन्या हरेद् धनम् ।

The girl shall receive from her brothers the fourth part of a share in the property.—(*Smṛtyantara.*) [Quoted in *Smṛti-chandrikā*, p. 626.]

NOTES

The meaning is that each daughter shall receive the fourth part of a share in the property, from the brothers,—in a case where the property is being divided after the father's death. This rule applies to cases where the property to be divided is large.—(*Smṛtichandrikā*, p. 626.)

331. बृहस्पति] समांशा मातरस्त्वेषां तुरीयांशा च कन्यका ।

The mothers are equal sharers with them, and the girl is entitled to the fourth part of a share.—(*Bṛhaspati.*)

NOTES

See II, 348.

332. याज्ञवल्क्य 2. 124.] (A) असंस्कृताश्च संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः ।
(B) भगिन्यश्च निजादंशाद् दत्त्वांशं तु तुरीयकम् ॥

(A) Those brothers who have not had their sacramental rites already performed shall have them performed by the brothers for whom those rites have already been performed. (B) The sisters also (shall have their sacramental rites performed by the brothers), after the latter have given to them the fourth part of their share.—(*Yājñavalkya,* 2. 124.) [Quoted in *Vivādaratnākara,* p. 493; *Vivādachintāmaṇi,* p. 209; *Madanapārijāta,* p. 648; *Smṛtichandrikā,* p. 625; *Parāsharamādhava,* p. 344; *Dāyabhāga,* p. 69; *Vīramitrodaya,* p. 580; *Vyavahāramayūkha,* p. 106; *Vibhāgasāra,* 6. 2-3.]

NOTES

See II, 337.

The 'sacramental rite' here stands for *marriage*; the marriage of the unmarried brothers shall be performed by the brothers already married; or they shall set aside wealth adequate for their marriage and divide the balance. It is from this that we learn that marriage should be performed with the common property, for brothers as well as sisters.—In cases where the property is not small, the brothers shall divide the property equally among themselves, after having set aside the fourth part of their share for the sister.—(*Vishvarūpa.*)

Those younger brothers whose sacramental rites, the *Jātakarma* and the rest, have not been performed by the fathers,—for them, these rites shall be performed by the elder brothers for whom they have been already performed. As for the sisters who have not been already married,—each of them shall be given away in marriage by the brothers, after these latter have given to each of the sisters the fourth part of the share that may have come to each of them.—(*Aparārka.*)

On the father's death if there are some brothers for whom the sacramental rites have not been performed,—these rites shall be performed for them, out of the common property, by the brothers when they are going to divide the property after their father's death.—As regards the sisters, those that have not had their sacramental rites performed shall have these performed by their brothers,—after having given to them the fourth part of their share. From this it follows that after the father's death, daughters also are entitled to a

share of the inheritance.—'*Nijāt amshāt,*' 'of their share,'—this phrase does not mean that each brother is to take out a fourth part from his share and give it to the sister; what is meant is that the girl should receive the fourth part of the share that has been ordained for a son of the same caste as that sister. That is to say, if the girl belongs to the Brāhmaṇa caste, she is to receive the fourth part of the share that would go to a son of the Brāhmaṇa wife. For instance, (*a*) If a Brāhmaṇa has only one wife belonging to the Brāhmaṇa caste, and she has one son and one daughter,—the entire paternal property shall be divided into two parts,—one of these two parts shall be divided into four parts—and one of these four parts shall be given to the daughter and the rest shall be taken by the son;—(*b*) Where there are two sons and one daughter, the entire paternal property shall be divided into three parts,—one of these three parts shall be divided into four parts,—and one of these four parts shall be given to the daughter and the rest shall be divided between the two sons;—(*c*) Where there are one son and two daughters, the paternal property shall be divided into three parts,—one of these three parts shall be divided into four parts,—two of these four parts shall be given to the two daughters, the rest shall be taken by the son; and so on when an equal number or unequal number of brothers and sisters belong to the same caste.—(*d*) In a case, however, where the Brāhmaṇa has one son from his Brāhmaṇa wife and one daughter from his Kṣattriya wife,—the paternal property shall be divided into seven parts,—the three parts that are ordained for a Kṣattriya son shall be divided into four parts,—and one of these four parts shall be given to the Kṣattriya daughter and the rest shall be taken by the Brāhmaṇa son;—(*e*) Where there are two Brāhmaṇa sons and one Kṣattriya daughter,—the paternal property shall be divided into eleven parts,—out of these eleven parts, the three parts ordained for a Kṣattriya son shall be divided into four parts,—and one of these four parts shall be given to the Kṣattriya daughter and the rest shall be divided between the two Brāhmaṇa sons.—It will not be right to hold the view that "no significance attaches to the specification of *the fourth part*; all that is meant is that she shall receive what may suffice for her marriage"—because this would be contrary to Manu (9. 111).—(*Mitākṣarā.*)

Out of the common property, the brothers who have had their *Upanayana.* marriage and other sacramental rites already performed shall perform those rites for those brothers whose sacraments have not been performed;—the sisters—the unmarried ones—also should have the rites performed for them by the brothers, who shall give them the fourth part of the share that may be theirs in accordance with their caste.—The first '*tu*' indicates that in the case of the brothers there is no limitation regarding the amount to be spent; while the second '*tu*' indicates that in the case of the sisters there is such a limitation.—In case 'the fourth part' is insufficient for the marriage of the sister, they shall give her as much as may suffice for it, in accordance with their means; such being the declaration of Viṣṇu—'*Anūdhānām kanyānām*, etc. (341, below).—(*Vīramitrodaya-Ṭīka* on *Yājñavalkya.*)

(A) The meaning is that the division of property shall be done only after all the sacramental rites ending with marriage have been performed for all those brothers and sisters for whom they may not have been performed,—

(B) The meaning of the second line is as follows :—After having performed the sacramental rites of the sisters for whom they have not been performed, the brothers shall give to them 'the fourth part.'—'from where ?'—'out of their share'; the *nija* '*āmsha*' 'their share,' stands for the share that has been ordained under Manu 9. 153) for the sons of the various castes.—'Four shares for the Brāhmaṇa, three for the Kṣattriya' and so forth ; and it is the 'fourth part' of this share.—The process of division shall be as follows :—[Here follows the scheme on the same lines as in the *Mitākṣarā*, then it goes on—] In a case where a Brāhmaṇa has four wives of the four castes,—the Brāhmaṇa wife has a son and a daughter, so also the Kṣattriya wife, the Vaishya wife and the Shūdra wife,—thus there being eight children, four male and four female,—according to Manu's text (9. 153) the Brāhmaṇa is to have four shares, the Kṣattriya three shares, the Vaishya two shares and the Shūdra one share ; so that there should be *eight* shares for the two Brāhmaṇa children, *six* for the two Kṣattriya children, *four* for the two Vaishya children and *two* for the two Shūdra children.—Thus the property shall be divided into *twenty* shares, and to the Brāhmaṇa daughter shall be given the 'fourth part' of the 'four parts' that have been ordained for the Brāhmaṇa son ; to the Kṣattriya daughter, the 'fourth part' of the 'three parts' ordained for the Kṣattriya son ; to the Vaishya daughter, the 'fourth part' of the 'two parts' ordained for the Vaishya son ; and to the Shūdra daughter, the 'fourth part' of the 'one part' ordained for the Shūdra son.—After these 'fourth' shares have been given away, the remaining property shall be pooled together, and out of this the sons shall receive four, three, two and one shares respectively.—In cases where the number of sons and daughters is not equal, the property shall be divided into as many shares as there are individuals, on the basis of their castes—in the proportion of 4, 3, 2, 1,—and each daughter shall receive the 'fourth part' of the share that has been ordained for a son of the same caste as that daughter, and the three-quarters of the shares that remain after one-quarter has been given to the daughter shall be pooled together and divided among the brothers in the same proportion of 4, 3, 2, 1.—Some people have held the following opinion on this point :—"Having set apart the 'one-fourth' for the sister, her marriage shall be performed with that 'one-fourth' ; and not that the marriage shall be performed out of the common property and then the property shall be divided."—But this view, not being accepted by *Medhātithi*, the author of the *Mitākṣarā*, and others, should be rejected. Or, every case may be dealt with in accordance with the custom prevailing in that country.—(*Madanapārijāta*, pp. 648—650.)

The meaning is that the brothers should give to each sister the fourth part of what is his own share and then perform their marriage.—(*Smṛtichandrikā*, pp. 625-626.)

After the father's death, his sons should perform, out of the common property, the sacramental rites for such of their brothers as have not had those rites performed already ;—as regards the sisters, those whose sacramental rites have not been performed shall be given the fourth part of the share ordained for a son of the caste to which a particular sister belongs ; and then their sacramental rites should be performed.—From this it follows that after the father's death, the daughters also are entitled to share in his property.—(*Parāsharamādhava*, pp. 345-346.)

Here Yājñavalkya has declared that the daughters should be married, not that they are entitled to inheritance.—Hence the conclusion is that where the property is a large one, they shall give to the sister just enough to enable her to get married, and not necessarily the 'fourth part of a share.'—This should be understood as applying to cases where there is an equal number of sons and daughters. In case the numbers are unequal, the result (of insisting upon the fourth of a share being given) would be to make the sister extremely rich, and the son very poor : and this would be improper ; as the son is the more important of the two.—(*Dāyabhāga*, pp. 69-70.)

The construction is—'*asamskṛtāḥ samskāryāḥ*,' 'those whose sacramental rites have not been performed should have those rites performed by the brothers.—(*Vīramitrodaya*, p. 580.)

Each of the sisters shall receive the fourth part of the share that is ordained for a son of the same caste as that sister, and shall then be married.—*Vyavahāramayūkha*, p. 106.)

333. कात्यायन] कन्यकानां त्वदत्तानां चतुर्थो भाग इष्यते ।
पुत्राणां च त्रयो भागाः साम्यं [*v.l.*, स्वाम्यं] स्वल्पधने स्मृतम् ॥

The fourth part is ordained for such girls as have not been given away, and three parts for the sons. In the event of the property being small, *there shall be equality.*—[Or, *v.l.*, *the girls shall have as much as may be required for their marriage.*]—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 494; *Smṛtichandrikā*, p. 625 ; *Dāyabhāga*, p. 69 ; *Vīramitrodaya*, p. 582.]

NOTES

'*Svāmyam*' [*v.l., for Sāmyam*] *svalpadhane smṛtam.*'—The meaning is that if the 'fourth part' of the wealth happen to be '*small*,'—while much more wealth is required for the girl's marriage,—then the '*svāmya*,' ownership, (right) of the girl extends over as much wealth as may be needed for her marriage ; hence that much of wealth should be taken by the sons out of their own share and given to the sister.—(*Vivādaratnākara*, pp. 494-495.)

'*Kanyakānām*,'—each of the daughters ; similarly '*putrāṇām*' means *each of the sons.*—In case the partible wealth is small, there shall be '*equality*,' (read '*Sāmyam*')—*i.e.*, the share of each sister shall be the same as that of the brother.—Such is the declaration of Viṣṇu.—Such is the sense of the fourth quarter of the verse.—The implication of this is that in cases where the property is not 'small,' each sister shall receive the 'fourth part.'—'*Three parts for the sons*';—this is meant for cases where the number of brothers and sisters is equal ; in cases where the number of sisters is smaller, the sons shall have not 'three parts,' but a little more.—(*Smṛtichandrikā*, p. 626.)

Three parts shall go to the son and one part to the daughter.—(*Dāyabhāga*, p. 69.)

The meaning of this is the same as that of Bṛhaspati's text—'*Samāmshā mātarastveṣām chaturthāmshāshcha kanyakāḥ.*'—'*Sāmyam,*' 'equality';—the meaning is that if the paternal property is not enough even for the marriage of the girls, then the share of the girls shall be the same as that of the sons.—(*Vīramitrodaya*, p. 582.)

334. अर्थशास्त्र II, p. 32.] रिक्थं पुत्रवतः पुत्रा दुहितरो वा धर्मिष्ठेषु विवाहेषु जाताः ।

If a man has left children, his property shall be taken by such of his sons and daughters as may have been born of righteous marriages.—(*Arthashāstrā* II, p. 32.)

335. अर्थशास्त्र II, p. 37.] अदायादा भगिन्यः ।

Sisters are not entitled to inheritance.—(*Arthashāstrā* II, p. 37.)

336. विष्णु 18. 34-35.] मातरः पुत्रभागानुसारेण भागहारिण्यः । अनूढा दुहितरश्च ।

The mothers shall receive shares in accordance with the shares of the sons;—so also the unmarried daughters.—(*Viṣṇu*, 18. 34-35.)

NOTES

See II, 351.

II (3) (g)

SACRAMENTAL RITES OF BROTHERS AND SISTERS

337. याज्ञवल्क्य 2. 124.] असंस्कृतास्तु संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः ।
भगिन्यश्च निजादंशात् दत्त्वांशं तु तुरीयकम् ॥

Those brothers who have not had their sacramental rites already performed shall have them performed by the brothers for whom those rites have been already performed ; the sisters also (shall have their sacramental rites performed by the brothers) after the latter have given them the fourth part of a share.—(*Yājñavalkya*, 2. 125.)

NOTES

See II, 331.

338. देवल] कन्याभ्यश्च पितृद्रव्ये देयं वैवाहिकं वसु ।

Out of the father's property, that amount of wealth shall be given to the daughters which may be needed for their marriage.—(*Devala*.) [Quoted in *Vivādachandra*, 20. 2—8 ; *Smṛtichandrikā*, p. 615 ; *Vibhāgasāra*, 6. 2—4, 6. 2—10.]

NOTES

Wealth needed for the marriage of the sisters shall be given out of the undivided paternal property.—(*Vivādachandra*, 20. 2—8.)

'*Vaivāhikam vasu*'—Such wealth as would be needed for marriage.—(*Smṛtichandrikā*, p. 625.)

If a daughter born after partition remains unmarried that much wealth shall be given to her which might suffice for her marriage.—(*Vibhāgasāra*.)

339. बृहस्पति] असंस्कृता भ्रातरस्तु ये स्युस्तत्र यवीयसः ।
संस्कार्याः पूर्वजैस्ते वै पैतृकान्मध्यकाद् धनात् ॥

If there are younger brothers whose sacramental rites have not been performed, they shall have those rites performed by the elder brothers, out of the joint ancestral property.—(*Bṛhaspati*.) [Quoted in *Vivādaratnākara*, p. 492 ; *Smṛtichandrikā*, p. 627 ; *Vīramitrodaya*, p. 584 ; *Vyavahāramayūkha*, p. 105.]

NOTES

The Accusative form is '*yavīyaṣaḥ*' should be treated as the Nominative form '*yavīyāmsaḥ*';—so say some people.—Others take it as the Genitive Singular and construe it with '*madhyogāt.*'—But there is no difference in the sense.—(*Vivādaratnākara*, p. 492.)

'*Tatra*'—*i.e.*, in the case of brothers whose father has died.—'*not been performed,*'—*i.e.*, by the father.—(*Smṛtichandrikā*, p. 627.)

'*Yavīyasaḥ*' is an archaic form for '*yavīyāmsaḥ*,'—and '*brothers*' include the *sisters* also,—says the author of the *Madanaratna*;—and the 'sisters' meant must be those that are *unmarried*,—such being the implication of the mention of the term '*Samskāra.*'—Only unmarried sisters are entitled to receive the 'fourth part of a share,' the others are only given some suitable thing.—(*Vīramitrodaya*, pp. 584-585.)

'*Yavīyasaḥ*' is an archaic form for '*yavīyāmsaḥ*.'—The '*brothers*' include the *sisters* also.—(*Vyavahāramayūkha*, p. 105.)

340. व्यास]असंस्कृतास्तु ये [*v.l.*, याः] तत्र *v.l.*, पैतृकादेव ते [*v.l.*, ता] धनात् [*v.l.*, तद्धनात्]
संस्कार्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथाविधि ॥

Those (brothers) and sisters whose sacramental rites have not been performed shall have those rites performed, in the proper manner, by their elder brothers, out of *the* [*v.l.*, *their*] paternal property.—(*Vyāsa.*) [Quoted in *Aparārka*, p. 731; *Vivādaratnākara*, p. 493; *Vivādachintāmaṇi*, p. 209; *Smṛtichandrikā*, p, 627; *Parāsharamādhava*, p. 344; *Vīramitrodaya*, p. 580; *Vyavahāramayūkha*, p. 106; *Vibhāgasāra*, 6. 2—1; *Dāyanirṇaya*, 21. 2—4.]

NOTES

The '*sacramental rite*' for the girls would be their *marriage*.—(*Vivādaratnākara*, p. 493.)

In cases where the property is being divided after the father's death,—if there are some brothers and sisters whose sacramental rites have not been performed,—those rites shall be performed by their elder brothers whose rites have already been performed.—(*Parāsharamādhava*, p. 344.)

The rites shall be performed out of the joint property.—(*Vīramitrodaya*, p. 580.)

This lays down the necessity of performing the sacramental rites of brothers and sisters.—(*Dāyanirṇaya*, 21. 2—4.)

341. विष्णु] अनूढानां च कन्यानां [*v.l.*, स्त्र] वित्तानुरूपेण संस्कारं कुर्यात् ।

One should perform the sacramental rite for the unmarried girls, in accordance with one's means.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 493; *Vivādachandra*, 20, 2—9; *Smṛtitattva* II, p. 171.]

NOTES

'*Kanyānām*' stands for *daughters* as well as *sisters*.—(*Vivādachandra*, 20. 2--9.)

342. नारद 13. 33.] येषां तु न कृताः पूर्वं [*v.l.*, च न कृताः पित्रा, पूर्वैः] संस्कारविधयः क्रमात् ।
कर्तव्या भ्रातृभिस्तेषां पैतृकादेव तद्धनात् ॥

Those whose sacramental rites have not been performed in due course—for them those rites shall be performed by their brothers, out of their paternal property.—(*Nārada*, 13. 33.) [Quoted in *Aparārka*, p. 731 ; *Vivādaratnākara*, p. 493 ; *Vivādachintāmaṇi*, p. 205 ; *Vivādachandra*, 20. 2—6 ; *Smṛtichandrikā*, p. 627 ; *Dāyabhāga*, p. 70 ; *Vīramitrodaya*, p. 584 ; *Smṛtitattva* II, p. 171 ; *Vibhāgasāra*, 4. 2—9.]

NOTES

The '*sacramental rites*' meant here are those beginning with the '*Jātakarma*' and ending with the '*Upanayana*.'—(*Vivādaratnākara*, p 493.)

'*Sacramental rites*'—ending with *Upanayana*.—(*Vivādachintāmaṇi*, p. 205.)

The meaning is that if there are brothers whose sacraments have not been performed by the father, enough should be set apart out of the paternal property for the performance of those rites.—(*Vivādachandra*, 20. 2—6.)

In view of the pronouns '*yeṣām*' and '*teṣām*' (which are masculine), this text should be taken as referring to *brothers* only.—(*Dāyabhāga*, pp. 70-71.)

The opinion expressed in the *Dāyabhāga* is not right ; the performance of the sacraments being as essential for the *sisters* as for the *brothers* ; the masculine gender in the pronouns should be taken for the impersonal ; or the form may be treated as an *ekasheṣa* compound (being expounded as *yāsām cha yeṣām cha* and *tāsām cha teṣām cha* ; so as to include both the masculine and the feminine).—(*Vīramitrodaya*, p. 584.)

343. नारद II, p. 33.] अविद्यमाने पित्र्यर्थे स्वांशादुद्धृत्य वा पुनः ।
अवश्यकार्याः संस्कारा भ्रातृभिः पूर्वसंस्कृतैः ॥

If there is no paternal property, those brothers who have already had their sacraments performed must perform the sacraments, taking the necessary wealth out of their own shares.—(*Nārada*, 13. 34.) [Quoted in *Aparārka*, p. 731; *Vivādachandra*, 20. 2—7 ; *Vivādachintāmaṇi*, pp. 205, 209 ; *Smṛtichandrikā*, p. 627 ; *Dāyabhāga*, p. 70 ; *Vīramitrodaya*, p. 580 ; *Smṛtitattva* II, p. 171 ; *Vibhāgasāra*, 4. 2—10; *Dāyanirṇaya*, 21. 2—5.]

NOTES

If there is no paternal property, the brothers shall set aside funds out of their own shares for the performance of the sacraments.—(*Vivādachandra*, 20. 2—7.)

The '*sacraments*' meant here are those ending with *Upanayana*; such is the implication of the obligatory '*avashya*,' 'must'; marriage is not quite obligatory; as it can be omitted in the case of those who wish to remain *Lifelong Religious Students*.—In the case of *sisters*, however, the marriage being the substitute of *Upanayana*, for women, the performance of the marriage would be obligatory; and hence for this also funds should be set aside from the brother's own shares.—(*Smṛtichandrikā*, p. 628.)

This refers to the sacraments for the *brothers*, not sisters.—(*Dāyabhāga*, p. 70.)

The performance of the sacraments is equally obligatory in the case also of *sisters* whose sacraments have not been performed.—(*Vīramitrodaya*, p. 580.)

'*Avashyakāryāḥ*'—all the sacraments ending with the *Upanayana*.—(*Vibhāgasāra*, 4. 2—10.)

344. अर्थशास्त्र II, p. 33.] सन्निविष्टसममसन्निविष्टेभ्यो नैवेशनिकं दद्युः। कन्याभ्यश्च प्रादानिकम्।

They shall give to the unmarried brothers the marriage-expenses equal in amount to what had been spent over the marriage of those already married; they shall pay the marriage-expenses to the daughters also.—(*Arthashāstra* II, p. 33.)

II (3) (h)

CLAIMS OF WIFE

345. याज्ञवल्क्य 2. 123.] पितुरूर्ध्वं विभजतां माताऽप्यंशं समं हरेत् ॥

When sons are dividing the property after the father's death, their mother shall receive an equal share.—(*Yājña-valkya*, 2. 123.) [Quoted in *Vivādaratnākara*, p. 483; *Vivāda-chandra*, 21. 1–7; *Madanapārijāta*, p. 663; *Smṛtichandrikā*, p. 623; *Parāsharamādhava*, p. 341; *Vīramitrodaya*, p. 578; *Vyavahāramayūkha*, p. 100; *Vibhāgasāra*, 5. 1. 1.]

NOTES

The mother, who has no '*Strīdhana*' of her own, shall receive a share equal to that of her son.—The word '*mother*' here stands for the father's wives in general, as all such wives would be equally related to the dead father.—(*Vishvarūpa*.)

After the father's death, when the sons are dividing the property,—*i.e.*, at the partition among the sons—the mother also shall receive an equal share.—No significance is meant to be attached to the plural number; so that the meaning is that the share of the mother shall be the same as that of a son.—The term 'mother' stands for all the co-wives.—(*Aparārka*.)

In 2. 115, Yājñavalkya has laid down that if the father is making a division of the property during his lifetime he shall make his wives 'equal sharers'; the present text lays down that even when the division is taking place after the death of the father, his wives are to receive shares 'equal to their sons'; *i.e.*, the mother's share shall be equal to that of her son,—if no '*Strīdhana*' has been given to her; in case '*Strīdhana*' has been given to her, she shall receive 'half a share,' as declared by Yājñavalkya under 2 145.—(*Mitākṣarā*.)

[The 'mother' here includes the *step-mother* also.—*Bālambhaṭṭi*.]

Where the property is being divided after the father's death, it is not only the brothers (sons of the father) who shall receive shares, but also their mother and step-mothers.—The particle '*api*' indicates the inclusion of the step-mother.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

In reality women are not entitled to any inheritance; all that the present text means is that 'something' may be given to the mother (not a regular 'share' in the property.)—(*Vivādachandra*, 21. 1–7.)

What is meant is that on the death of the father, when the sons are dividing the property, their mother shall receive an equal share.—This text

has to be taken along with the two qualifications—(*a*) 'those to whom *Strīdhana* has not been given,' and 'in case *Strīdhana* has been given, only half a share shall be allotted to her.'—Such is also the opinion of Vijñāneshvara, Dhāreshvara and others.—Or, in the text 'if *Strīdhana* has been given, only half a share shall be allotted to her,' the term 'half' may be taken in the sense of 'equal parts'; so that where the mother has her '*Strīdhana*,' she shall be given half of what may be the son's share; *i.e.*, if the value of the son's share is ten *Niṣkas*, she shall receive five *Niṣkas*. . . When the father and son are dividing between themselves the grandfather's property, then the wife of that grandfather shall receive an equal share, if she has a son; if she has no son, then she shall receive only what may have been given to her as a loving gift, and she shall not be entitled to any share in the property. In this grandfather's property, the 'mother' (*i.e.*, the grandfather's daughter-in-law) shall not receive a share; she shall receive only ornaments and such things.—Because both these texts—(*a*) 'If the father is making equal shares, his wives shall be made equal sharers,' and (*b*) 'when sons are dividing the property after the father's death, their mother shall receive an equal share'—are meant to apply to such properties as belonged principally to the father,—*i.e.*, such property as the father had inherited as his share or had acquired as gifts.—(*Madanapārijāta*, pp. 663-664.)

The meaning is that at the time of partition, the sonless widows should receive a share; as each of them has to be supported.—(*Vibhāgasāra*, 5. 1-2.)

Though there are several texts which speak of women as being 'not entitled to inheritance,' yet they are not inconsistent with the present text; as '*amsha*,' 'share,' is not the same thing as 'inheritance'; members of trading corporations receive 'shares'; but that is not 'inheritance.'—(*Smṛtichandrikā*, p. 623.)

This share shall be given only in cases where the mother has had no '*Strīdhana*' given to her; if it had been given, she shall receive only half.—(*Parāsharamādhava*, p. 341.)

This share is to be given only in case no '*Strīdhana*' had been given; where it had been given, she shall receive only 'half.' 'Half' does not mean exactly *half*, but that much which along with her *Strīdhana* would make her property equal to her son's. . . . The word '*mātā*,' 'mother,' here stands for '*jananī*,' 'one who has given birth to sons'; hence it cannot include the *sonless* step-mother; the word being used only once cannot stand for both the 'primary' and the 'secondary' mothers.—(*Vīramitrodaya*, p. 578.)

346. विष्णु 18. 34-35.] (A) मातरः पुत्रभागानुसारेण भागहारिण्यः ।
(B) अनूढा दुहितरश्च ।

(A) The mothers shall receive shares in accordance with the shares of the sons;—(B) So also the unmarried daughters.—(*Viṣṇu*, 18. 34-35.) [Quoted in *Vivādaratnākara*, p. 483; *Dāyabhāga*, p. 68; *Vīramitrodaya*, p. 582; *Vyavahāramayūkha*, p. 100.]

NOTES

See II, 336.

The plural ending '*mātaraḥ*,' 'mothers,' indicates that this refers to all the mothers that may be there. Or else, the text may mean that in the event of there being mothers who belong to different castes, there shall be a sliding scale in the shares allotted to them, there being a decrease due to the lower caste.—(*Vivādaratnākara*, p. 483.)

(A) The meaning that just as the sons of the four castes—[Brāhmaṇa, Kṣattriya, Vaishya and Shūdra] are entitled respectively to four, three, two and one shares,—so also shall be the share of the wives.

(B) As regards the unmarried daughters, their share shall be the fourth part of the corresponding son's share.—(*Dāyabhāga*, pp. 68-69.)

(A) Just as among the sons of the four castes, the shares allotted are 4, 3, 2 and 1 respectively, so also shall be the shares allotted to the wives belonging to the four castes.—(B) As regards the daughters, even though the present text would imply that they also are to receive shares in the same proportion of 4, 3, 2, and 1,—yet in view of Manu and Yājñavalkya both having laid down the daughter's share to be the fourth part of the son's share, the present text declaring that 'the unmarried daughters shall receive shares *in accordance with the share of the sons*' must be taken to mean that the daughter shall receive the *fourth part* of the share of the son of the same caste,—and *not* that her share shall be *equal* to that of the son. Thus alone can the present text be reconciled with Manu and Yājñavalkya. This has been made clear in Bṛhaspati's text—'*Samāṃshā mātarastveṣām, etc.*'—(*Vīramitrodaya*, p. 582.)

347. व्यास] असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः ।
पितामह्यश्च सर्वास्ताः मातृतुल्याः प्रकीर्तिताः ॥

Even the sonless wives of one's father have been declared to be equal sharers; the father's mothers have all been declared to be equal to the mother.—(*Vyāsa.*) [Quoted in *Vivādaratnākara*, p. 484; *Smṛtichandrikā*, p. 623; *Dāyabhāga*, pp. 67-68; *Dāyanirṇaya*, 16. 2—5.]

NOTES

See III, 34; and IV, 19.

'*Tu*' means '*api*,' *even*.—(*Vivādaratnākara*, p. 484.)

'When the property is divided equally among sons, the sonless daughter-in-law also should receive the same share.'—'*Pituḥ*' is not to be construed with '*patnyaḥ*;' so that 'the wife of the father' is not what is meant.—This woman is to receive this equal share only in case she has not got any *Strīdhana* of her own,—as declared by *Yājñavalkya*, 2. 15. (See. II, 26.)

348. बृहस्पति] तदभावे तु जननी तनयानां समांशिनी [*v.l.*, तनयांशसमांशिनी]।
समांशा मातरस्त्वेषां तुरीयांशा च कन्यका ॥

On the death of the father, the mother receives the same share as her sons ; their (other) mothers are equal sharers with them ; and the girl is entitled to the fourth part of a share.—(*Bṛhaspati.*) [Quoted in *Dāyabhāga*, p, 69 ; *Vīramitrodaya*, p. 532 ; *Vivādaratnākara*, p. 484 ; *Vivādachintāmaṇi*, p. 204 ; *Vibhāgasāra*, 4. 2–7 ; *Dāyanirṇaya*, 20. 2—10.]

NOTES

See II, 331.

What this clearly means is that the mothers belonging to the several castes shall receive the same share that has been ordained for a son belonging to the same caste as herself ; and the daughter also shall receive the fourth part of the share that has been ordained for a son of the same caste as herself.—(*Vīramitrodaya*, p. 582.)

The term '*jananī*,' 'mother' (in the first line) stands for one who has sons of her own ; and '*mātaraḥ*' 'mothers' (second line) for those who have no sons of their own.—'*Turīyāmshā*,' the fourth part of the share ordained for a son of that caste to which the girl belongs. This is to be given to them for their marriage.—Here 'girl' stands for the *unmarried* daughter.—(*Vivādaratnākara*, p. 484.)

'*Tadābhāve*'—in the absence of the father.—'*Jananī*,' the mother who has a son of her own ;—'*mātaraḥ*,' step-mothers, without sons of their own ;—all these receive a share equal to the son's.—The unmarried sisters are to receive from the brothers, the fourth part of their shares, for the expenses of their marriage.—(*Vivādachintāmaṇi*, p. 205.)

On the death of the father, the mother with sons, and the step-mothers of the sons receive the same shares as the sons ; and the unmarried sisters receive the fourth part of the share of their brother.—(*Vibhāgasāra*, 4. 2–8.)

The meaning is that on the death of the father, the 'mother,'—*i.e.*, the wife with sons,—as also the '*mothers*'—*i.e.*, step-mothers,—all these receive the same shares as the sons.—(*Dāyanirṇaya*, 20. 2—10.)

349. नारद 13. 12.] समांशहारिणी माता पुत्राणां स्यान्मृते पतौ ।

On her husband's death, the mother shall receive the same share as the sons.—(*Nārada*, 13. 12.) [Quoted in *Dāyabhāga*, p. 44 ; *Smṛtitattva* II, p. 167 ; *Dāyanirṇaya*, 20.2–8.]

NOTES

'*Same*'—this is to be so where the mother has *not* received any *Strīdhana* from her husband or others ; the step-mother is to receive only food and clothing ;—such is the view of the *Dāyabhāga*. Mishra, however, takes the

term 'mother' in the text as standing for the *step-mother*; as thus alone can this be reconciled with Bṛhaspati's text (above).—(*Dāyanirṇaya*, 20. 2—10.)

350. कात्यायन] मातापि पितरि प्रेते पुत्रतुल्यांशहारिणी ।

On the father's death, the mother receives the same share as the son.—(*Kātyāyana.*) [Quoted in *Dāyabhāga*, p. 49; *Vīramitrodaya*, p. 566; *Smṛtitattva* II, pp. 170, 174.]

NOTES

The mother is to receive a share equal to the son's only when she has had no '*Strīdhana*'; if she has got this, then she is to receive only 'half.'—(*Smṛtitattva* II, p. 170.)

351. स्मृत्यन्तर] जनन्यस्व—[*v.l.*, प]—धना पुत्रैर्विभागेंशं समं हरेत् ।

At partition, the mother, who has no property of her own, shall receive a share equal to that of the sons.—(*Smṛtyantara.*) [Quoted in *Smṛtichandrikā*, p. 624; *Parāsharamādhava*, p. 341.]

NOTES

'*Asvadhanā*,' without any '*Strīdhana*' exclusively her own;—such a mother shall receive a share equal to her son's at the time that the property is being divided after the father's death. This makes it clear that all mothers are not to receive equal shares,—but only such as have no *Strīdhana*.—The term 'mother' here includes the step-mothers also. The real purport of the text is as follows:—(*a*) The mothers are not to receive 'shares' in cases where their own property is sufficient for their maintenance and other purposes;—(*b*) in cases where their own property is not sufficient for these purposes, the mothers, even though having property of their own, may not receive 'equal shares,' but they shall receive such smaller portions as may be found necessary for the said purposes;—(*c*) if the property being divided is a very large one, the mothers, even though without property of their own, are not to receive a share equal to their son's, but such smaller portions as may be deemed necessary for the said purposes.—The qualification '*who has no property of her own*' implies that what the mother receives is only for the supplying of her needs, and not as an *inheritance*, like the brothers.—Even on the above explanation the term '*equal*' in the text does not become useless; as it still serves the purpose of precluding the possibility of the mother getting more, in cases where, by reason of the property being small, the 'equal share' would not be sufficient for her needs.—(*Smṛtichandrikā*, pp. 624-625.)

'*Apadhanā*' (*v.l.*, for '*asvadhanā*')—having no *Strīdhana* exclusively her own;—such a mother shall receive a share equal to that of a son, at the time that the property is being divided by the sons.—The term '*mother*' includes the step-mothers.—(*Parāsharamādhava*, p. 341.)

352. याज्ञवल्क्य 2. 148.] अधिविन्नस्त्रियै देयमाधिवेदनिकं समम् ।
न दत्तं स्त्रीधनं यस्या [*v.l.*, यासां] दत्ते त्वर्धं प्रकल्पयेत् ॥

To the superseded woman one should give an equal amount as compensation for supersession,—if she has not been already given her *Strīdhana* ; in case she has got it, she shall receive only half.—(*Yājñavalkya*, 2. 142.) [Quoted in *Dāyabhāga*, p. 67.]

NOTES

In a case where a wife has been superseded by her husband marrying again, she shall receive the amount that may have been spent over this second marriage,—if the superseded wife has had no '*Strīdhana*' given to her ;—in case *Strīdhana* had been given, she shall receive half of the said amount.—This applies to those cases of 'supersession' where there have been no circumstances justifying the supersession.—(*Vishvarūpa.*)

When the husband marries another wife while his former wife is still alive, this latter is said to be 'superseded'; such a 'superseded wife' shall receive as '*adhivedanika*'—compensation for supersession,—'*samam*,' an 'equal amount,'—'equal' to what ?—equal to what may have been given to the newly-married wife.—This compensation shall be given only in cases where the superseded wife has had no '*Strīdhana*' given to her. If she has received her '*Strīdhana*,' then she is to receive only '*half*,' not an 'equal' amount ;—this does not mean that she is to receive an exact *half* ; what is meant is that she shall be given that much—on account of compensation—as may make her '*Strīdhana*' equal to what has been given to the newly-married wife.—(*Aparārka.*)

A wife is called 'superseded' when her husband takes another wife ;—she is to receive as '*ādhivedanikam*'—compensation for supersession—'an equal amount,'—*i.e.*, the amount spent over the new marriage.—This is to be given only in case the superseded wife has not previously received her '*Strīdhana*' either from her father-in-law on from her husband.—In case she has received it, she is to receive half of the said amount ;—'half' here does not mean one of two equal parts ; it stands for that which, along with the *Strīdhana*, would make up the amount spent over the new marriage.—(*Mitākṣarā.*)

The woman who has been superseded by a co-wife shall receive as compensation for supersession an amount equal to what has been given to the newly-married wife,—if the former has received no *Strīdhana* of her own ; if she has received her *Strīdhana*, then she shall receive half of what has been given to the new wife.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

II (4)

REUNITED COPARCENERS

353. बृहस्पति 25. 72.] विभक्तो यः पुनः पित्रा भ्रात्रा वैकत्र संस्थितः ।
पितृव्येणाथ वा प्रीत्या स तु संसृष्ट उच्यते ॥

If one who has been divided lives again, through affection, with his father or brother or with his uncle, he is said to be 'reunited.'—(*Bṛhaspati*, 25. 72.) [Quoted in *Aparārka*, p. 748; *Vivādaratnākara*, p. 605; *Vivādachintāmaṇi*, p. 244; *Vivādachandra*, 24. 2–7; *Smṛtichandrikā*, p. 700; *Madanapārijāta*, p. 677; *Parāsharamādhava*, p. 361; *Dāyabhāga*, pp. 160, 220; *Vīramitrodaya*, p. 647; *Smṛtitattva*, pp. 163, 192; *Dvaitaparishiṣṭa*, p. 38; *Vibhāgasāra*, 17. 1–8; *Dāyanirṇaya*, 8. 1—4.]

NOTES

Three kinds of '*Saṃsṛṣṭī*'—'reunited coparcener,' have been described here.—(*Aparārka*, p. 748.)

The particle '*vā*' is meant to imply that those mentioned here are not the only kinds of 'reunited coparcener'; so that even when one has been divided from a coparcener in the shape of the uncle's son and has come to live with him,—he also is spoken of in the world as 'reunited.'—The *Prakāsha*, however, holds that in view of the present text, there are *only three kinds* of 'reunited coparceners.'—(*Vivādaratnākara*, pp. 605-606.)

'*Saṃsarga*,' 'Re-union,' consists in the understanding among a number of persons to the effect that 'among ourselves what belongs to one belongs to all.' This understanding creates the ownership of all the members over the property that has been, is and will be acquired by each one of themselves.—In view of the definite enumeration in the present text the term '*saṃsarga*,' 're-union,' must be taken in the restricted sense of that uniting or pooling of property which takes place after division from the father, the brother and the uncle;—such is the view of the *Prakāsha*.—This, however, is not right. The implication of the term '*punaḥ*,' 'again,' which signifies *repetition*, is that it would be much simpler to take the term 'union' in the general sense of the pooling of properties following upon partition. Thus it is that the term 'union' becomes applicable to reunion with the uncle's son, who also is a person with whom partition takes place. The mention of the 'father' (brother and uncle) in the text is only by way of illustration.—It is for this reason that the

Vivādaratnākara has declared that the particle '*vā*' is meant to imply that those named in the text are not the only kinds of 'reunited coparceners.'—The view of the moderns is that 'reunion' means simply the pooling together of the belongings of those whose belongings have been separate ; and it is not necessary to make 'previous partition' a necessary factor in the connotation of the term 'reunion' ; as this would only complicate the matter. As for the condition of the 'belongings being separate,' that may be either normal or due to partition ; that is a different matter.—The only basis for such 'reunion' consists in the agreement between the parties reuniting and there is nothing to prevent such agreement between persons whose belongings are separate normally (and not by partition).—(*Vivādachintāmaṇi*, p. 245.)

'*Samsarga*,'—'Reunion' does not consist in the parties living and cooking together ; it consists in their pooling their properties after having divided them. The term '*punaḥ*' indicates the fact of the parties having been united before partition. Such 'reunion' is brought about by the understanding to the effect that 'over all our properties our ownership shall be joint' ; hence it is this understanding that constitutes 'Reunion' ; and this agreement is in the form—'all our past, present and future belongings shall be as much yours as mine.'—(*Vivādachandra*, 24. 2—7.)

That son is said to be 'reunited' with the father who, after having separated from him, comes to live with him again, through affection. The implication of this is that it cannot be called 'reunion' (in the technical sense) except when it is with the father, brother or uncle (those mentioned in the text) ; it would not be 'reunion' when it would be with the uncle's son, for instance . . . . 'Reunion' does not consist in mere co-residence ; it consists in the parties pooling their resources in the manner in which they were before partition.—(*Smṛtichandrikā*, p. 700.)

It is only with one's father, brother or uncle that one can be said to be 'reunited' (in the technical sense).—(*Madanapārijāta*, p. 677.)

The son who had become divided from the father,—if, through affection, he joins him again, he is said to be 'reunited.' What is meant is that anyone who is in co-residence with anyone is called '*Samsṛṣṭa*,' 'Reunited.'—(*Parāsharamādhava*, p. 361.)

It is only in the case of parties who are by nature, normally, undivided in regard to the ancestral property,—such parties, for instance, as the father and son, or brother and brother, or nephew and uncle,—that when, after having divided, they come together again, through mutual affection, and annulling their previous division, pool their belongings, coming to the understanding that 'whatever is mine is yours, and whatever is yours is mine,' and come to live together in the same house and as one 'householder,'—they come to be spoken of as 'reunited' ; and not in the case of parties other than those who are naturally undivided—such for instance, as traders who combine only their wealth and carry on their business jointly.—Nor would the term apply even to the said parties who, after being separated, merely pool their resources and do not come to the aforesaid understanding, through mutual affection.—(*Dāyabhāga*, p 160 ; *Vīramitrodaya*, p. 647.)

[*Smṛtitattva* II (pp. 163-164) quotes the above view of *Dāyabhāga* and rejects it and on page 192, it supplies the following explanation of the text]—

'After partition has been effected, if, through friendliness, son and father, brother and brother, or nephew and uncle, come and live together, this is what is called 'reunion.'

[The *Dvaitaparishiṣṭa* (p. 38) reproduces the remarks of the *Vivāda-chintāmaṇi.*]

'All our property, past, present and future, shall belong to every one of us, till we divide again,'—those uniting under this agreement are called 'reunited coparceners,'—so says the *Prakāsha,* which adds that such 'reunion' is permissible only with one's father, brother and paternal uncle.—Others have held that 'reunion' is the coming together of persons who have been holding separate properties.—Both these views are to be rejected, on account of the presence of the word '*punaḥ*' which means '*again.*' According to the second view a case where for convenience of business transactions the mother joins her property with the property of her minor son would have to be regarded as a case of 'reunion.'—Hence the view of *Vivādaratnākara* is that the particle '*vā*' indicates indefiniteness; so that the meaning is that 'if a man becomes united with anyone from whom he had been divided, he is said to be *reunited.*'—(*Vibhāgasāra,* 17. 1—8.)

The meaning is as follows—In a case where a number of persons are, by birth, *non-divided* in relation to the father's and the grandfather's property,—but they have become *divided,*—if, through friendliness, these persons set aside their separation or division, and come together as members of a joint family,—with the agreement that 'all that is mine is yours also,'—these are 'reunited coparceners.' This appellation cannot apply to a company formed by traders.—(*Dāyanirṇaya,* 8. 1.)

354. बृहस्पति 25. 73.] विभक्ता भ्रातरो ये तु सम्प्रीत्यैकत्र संस्थिताः ।
पुनर्विभागकरणे तेषां ज्यैष्ठ्यं न विद्यते ॥

When brothers, formerly divided, have come to live together through affection,—if they proceed to make a second division, there shall be no primogeniture.—(*Bṛhaspati,* 25. 73.) [Quoted in *Vivādaratnākara,* p. 602 ; *Smṛtichandrikā,* p. 701 ; *Vīramitrodaya,* pp. 644-645 ; *Smṛtitattva* II, p. 193 ; *Dāyabhāga,* p. 155 ; *Vivādachintāmaṇi,* pp. 245-246 ; *Vibhāgasāra,* 17. 2—1 ; *Dāyanirṇaya,* 22. 1—4.]

NOTES

The negation of the preferential share due to primogeniture mentioned here should be understood to pertain to the twice-born castes ; as in the case of the Shūdra, there is no preferential share under any circumstances.—(*Smṛtitattva* II, p. 193.)

'*Primogeniture*.'—Though the condition (of seniority) justifying the preferential share is present, yet there shall be no preferential share.—An exception to this, however, is made in another text (25. 77, below).—(*Vivādachintāmaṇi*, p. 246.)

The meaning is that though the person concerned is entitled to a higher share, there shall be no preferential share in this case.—(*Vibhāgasāra*, 17. 2. 2.)

'Seniority' is not taken into account in cases where there is re-partition among *re-united* brothers. (*Dāyanirṇaya*, 21. 1.)

355. बृहस्पति 25. 74-75.] यदा कश्चित् प्रमीयेत प्रव्रजेद्वा कथञ्चन ।
न लुप्यते तस्य भागः सोदरस्य विधीयते ॥
या तस्य भगिनी सा तु ततोंशं लब्धुमर्हति ।
अनपत्यस्य धर्मोऽयमभार्यापितृकस्य च ॥

When any one (of the reunited members) should die, or go out as a Renunciate, his share shall not be lost; it shall be allotted to his uterine brother; if there be a sister of his, she is entitled to receive a share of his property.—This is the law relating to one who is childless and who has left no wife or father.—(*Bṛhaspati*, 25. 74-75; [Quoted in *Vivādachintāmaṇi*, p. 246; *Smṛtichandrikā*, pp. 701, 708; *Dāyabhāga*, pp. 155-156; *Aparārka*, p. 748; *Vivādachandra*, 26. 1—4; *Parāsharamādhava*, p. 364; *Vīramitrodaya*, p. 685; *Vyavahāramayūkha*, p. 152; *Vibhāgasāra*, 17. 2. 2.]

NOTES

See III, 12.

After reuniting, if one of them should die, or should take to a stage of life other than the householder's and thereby cease to be entitled to receive a share in the property,—his share shall not be lost.—To whom shall his share then go?—*It shall be allotted to his uterine brother*; *i.e.*, to the *reunited* uterine brother.—(*Vivādachintāmaṇi*, p. 246.)

Before the previous partition, if a member dies or becomes a Renunciate, his share disappears; and the entire property goes to his co-residents.—It is not so in the case of *reunited* members; in whose case the entire property shall not be taken by all the reunited members; in fact, at the time of the partition among the reunited members, the share of each undivided member shall be set aside; and in the case in question, the share of the dead or renunciate member shall be assigned, not to his wife—as in the case of the husband who has been divided from his coparceners,—but to the reunited uterine brother of that member. No significance is meant to be attached to the singular number in the term 'uterine brother'; so that the share of the dead person shall go to all such uterine brothers of his as may be among the reunited; as laid down in Nārada's text—'*Bhrātṛṇāmaprajaḥ prēyāt, etc.*'—(*Smṛtichandrikā*, pp 701-702.)

'*Na lupyate*, etc.'—must be taken as referring to the case of *reunited coparceners*.—The last line means that the reunited uterine brother is entitled to receive the share of the dead brother only if this brother has left no son or daughter or wife or father.—(*Dāyabhāga*, p. 156.)

Among reunited coparceners, if any one dies, or becomes a renunciate, his share does not become lost; that share shall go to his uterine brother; according to Manu's text—'*Sodaryā vibhajeran, etc.*'—The sentence '*anapatyasya, etc.*,' is meant to be an exclusion of other views.—Some people have offered the following explanation: In a case where there are two uterine brothers and one step-brother,—*a part of their property* has been divided,—after which they become reunited; now if one of the two uterine brothers dies, the proportion of his share in the *undivided* portion of the property also having been practically fixed by the partial division that they have had, what the present text does is to specifically point out that that share of the dead brother shall be taken by his uterine brother.—This, however, is not right, as no division takes place by mere *pointing out*, unless there is a 'throw of dice' (drawing of lots); it is the 'dice-throw' that determines shares.—(*Vibhāgasāra*, 17. 2-3.)

356. बृहस्पति 25. 76.] संसृष्टौ यौ पुनः प्रीत्या तौ परस्परभागिनौ

When two coparceners have become reunited, they shall inherit each other's property.—(*Bṛhaspati*, 25. 76.) [Quoted in *Vivādaratnākara*, p. 602; *Smṛtichandrikā*, p. 703; *Vyavahāra-mayūkha*, p. 150.]

NOTES

When there are no reunited uterine brothers of the dead reunited member, his property shall go to reunited members other than uterine brothers, *i.e.*, those born of different mothers.—(*Smṛtichandrikā*, p. 703.)

If a reunited member denies, another reunited member receives his property.—(*Vyavahāramayūkha*, p. 150.)

357. बृहस्पति 25. 77.] संसृष्टानां तु यः कश्चित् विद्याशौर्यादिनाऽधिकम् ।
धनं प्राप्नोति तत्रास्य द्व्यंशः शेषाः समांशिनः ॥

If among reunited coparceners any one should acquire additional property through learning, valour or other (independent effort of his own) in that property he shall receive a double share; the rest shall receive equal shares.—(*Bṛhaspati*, 25. 77.) [Quoted in *Vivādaratnākara*, p. 602; *Vivādachintāmaṇi*, p. 246; *Vivādachandra*, 26. 1—10; *Smṛtichandrikā*, p. 701; *Madanapārijāta*, p. 680; *Parāsharamādhava*, p. 361; *Vīramitrodaya*, p. 677; *Smṛtitattva* II, p. 193; *Vyavahāra-mayūkha*, p. 147.]

NOTES

'*Learning and valour*'—include other conditions which would tend to connect the thing with the acquirer alone. —(*Vivādaratnākara*, p. 602.)

Among reunited coparceners if anyone acquires more wealth by learning, valour and such other special efforts of his as would connect the property with him alone,—he is to receive a double share in that wealth.—(*Vivādachandra*, 26, 1—10.)

'*Double share*'—in the additional property acquired by him. —This text lays down the partibility of that also which may have been acquired without drawing upon the reunited property.—(*Smṛtichandrikā*, p. 701.)

The 'double share' should be understood as to be given only in the additional property that has been acquired.—(*Madanapārijāta*, p. 680.)

The 'double share' is to be given only in the property acquired by him by learning, etc.,—not in the entire property. This is meant to declare the partibility of that also which has been acquired without drawing upon the joint property.—(*Parāsharamādhava*, p. 361.)

This lays down an exception to the general rule regarding the impartibility of what has been acquired by learning, valour and the like.—(*Vīramitrodaya*, p. 677.)

The double share for the acquirer having been laid down as a general rule, what is meant by the present text is that in the case of reunited members, the acquirer receives two shares even in that property which has been acquired by a member by drawing upon the reunited joint property; while under the general rules the acquirer receives a double share only in that property which he has acquired *without* drawing upon the joint property;—so says Madana.—(*Vyavahāramayūkha*, p. 147.)

358. मनु 9. 210.] विभक्ताः [*v.l.*, संसृष्टाः] सह जीवन्तो विभजेरन् पुनर्यदि ।
विष्णु 18. 41.] समस्तत्र विभागः स्यात् ज्यैष्ठ्यं तत्र न विद्यते ॥

If coparceners, living together, after having divided once, happen to make a second partition, the division, in that case, shall be equal; in such cases there is no Primogeniture.—(*Manu*, 9. 210; *Viṣṇu*, 18. 41.) [Quoted in *Aparārka*, p. 748; *Mitākṣarā*, p. 831; *Vivādaratnākara*, p. 601; *Vivādachandra*, 24. 2—9; 25. 1. 1; *Madanapārijāta*, p. 678; *Smṛtichandrikā*, p. 700; *Parāsharamādhava*, p. 360; *Dāyabhāga*, p. 219; *Vīramitrodaya*, pp. 676, 678; *Vyavahāramayūkha*, p. 146.]

NOTES

The text forbids the 'preferential share' which would appear to be the standing rule in all partitions.—(*Medhātithi*.)

Those who have become divided and then having acquired more property, they live together,—if these persons were to make another division, the shares should be equal; and there should be no preferential share for the eldest.—(*Sarvajñanārāyaṇa.*)

The brothers have become divided, either with or without preferential shares;—then they pool their wealth and proceed to live together; if again they make a division, this division shall be equal, and no preferential share shall be given to the eldest.—(*Kullūka.*)

The brothers have been previously divided by the father,—later on they become reunited;—if again they make a division, this shall be in equal shares; what is meant is that there shall be no preferential share for the eldest.—(*Rāghavānanda.*)

This lays down the rule peculiar to division among reunited coparceners.—'*Vibhajeran,*'—*i.e.*, among the reunited coparceners.—(*Nandana.*)

The only unequal division that this precludes is that due to 'primogeniture,' not those due to other causes. Therefore at the second division each coparcener shall receive a share in proportion to the amount of wealth that he brought into the joint stock at the time of reunion.—(*Aparārka*, p. 748.)

'*Living together*'—as *reunited* coparceners.—'*The division shall be equal*';—*i.e.*, there shall be no preferential share for the eldest, and other inequalities.—(*Vivādaratnākara*, p. 601.)

There is no larger share for anyone.—(*Vivādachandra*, 25. 1. 1.)

There is to be no unequal division in this case.—(*Madanapārijāta*, p. 678.)

'*Living together*'—in co-residence.—'*Partition,*' of the reunited property.—That 'there shall be no preferential share by reason of seniority' is already expressed by the declaration that '*the division shall be equal*'; and yet we have the reiteration '*there is to be no primogeniture,*'—which precludes all inequality in the division that might be due to seniority; and this is for the purpose of permitting such inequality of division as might be due to the contribution of individual members to the reunited joint stock being small; so that an unequal division shall be made by assigning to each undivided coparcener a share in accordance with his contribution to the joint stock at the time of reunion.—(*Smṛtichandrikā*, p. 700.)

Unequal division having been precluded by the declaration that '*the division shall be equal,*' the reiteration to the effect that '*there shall be no primogeniture*' serves to indicate that unequal division shall be permissible in cases where the reunited members have made unequal contributions to the joint stock.—(*Parāsharamādhava*, pp. 360-361.)

'*The division shall be equal;*'—this refers to cases where the reunion is among brothers of the same caste. In cases where the reunion is between a Brāhmaṇa and a Kṣattriya, the share assigned to each shall always be in accordance with the proportion laid down. In fact the assertion that the division shall be equal serves the purpose only of precluding the preferential share of the eldest brother.—(*Dāyabhāga*, p. 219.)

What is meant by the reiteration '*there is to be no primogeniture*' is that there shall be no inequality of division on account of the seniority of a brother, but that there shall be inequality due to the greater or less amount

of the wealth contributed to the reunited joint stock by the individual coparceners.—(*Vīramitrodaya*, p. 616.)

Some people hold that there is to be no inequality due to seniority, but there shall be inequality due to the greater or less amount of wealth contributed by the coparceners to the joint stock.—Others hold that there is to be no inequality in any case,—not even in cases where the coparceners have made unequal contributions to the joint stock. Such also is the custom.—(*Vyavahāramayūkha*, p. 146.)

359. मनु 9. 211-212.] येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः ।
म्रियेतान्यतरो वाऽपि तस्य भागो न लुप्यते ॥
सोदर्या विभजेरंस्तं समेत्य सहिताः समम् ।
भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः ॥

If the eldest or the youngest of the brothers should be deprived of his share,—or if either of them dies,—his share does not become lost;—his uterine brothers, coming together, shall divide it equally; as also the reunited brothers and consanguineous sisters.—(*Manu*, 9. 211-212.) [Quoted in *Aparārka*, p. 749; *Mitākṣarā*, p. 831; *Vivādaratnākara*, p. 601; *Vivādachintāmaṇi*, p. 246; *Vivādachandra*, 25. 1-2; 25. 1. 4; *Madanapārijāta*, pp. 678; 679; *Smṛtichandrikā*, pp. 681, 703; *Dāyabhāga*, p. 203; *Vīramitrodaya*, pp. 678-679; *Smṛtitattva* II, p. 192; *Vyavahāramayūkha*, p. 149.]

NOTES

See III, 85, 91

If among the brothers, '*the eldest or the youngest*' brother '*should be deprived of his share*'—by being found to be debarred on account of having become an outcast, or some such disability,—or, '*if he dies*,'—'*his share does not become lost*.—How his share shall be disposed of is explained in the next line: His share shall be taken by those '*uterine brothers*' who may have been 'united' with him in property;—also '*consanguineous sisters*,'—*i.e.*, those that are unmarried; it is only unmarried sisters that can be called '*sanābhi*,' 'consanguineous'; those that are married have gone over to the 'family' of their husbands, and hence no longer remain 'consanguineous' to their brothers;—'*also the reunited brothers*.'—This should not be taken to mean that the share shall be taken (*a*) by the uterine brothers, and also (*b*) by such brothers as may have been reunited to him;—as in that case, those brothers also who are *not uterine*, but *reunited*, would be entitled to a share in the property. Among the uterine brothers, there may be some who were reunited and others that were not reunited; and in a case where both these kinds of uterine brothers are present, both shall divide the property among themselves.—This will not militate against *Yājñavalkya*, 2. 139.—

'*Anyodaryastu samsṛṣṭī, etc.*'—If, however, there are no uterine brothers at all, then the property shall be taken by such half-brothers as may be reunited with the dead person, and none others.—Among *uterine* brothers, even when separated, there is always some sort of 'nearness'; so that the functions of the uterine brother would, in a general way, be accomplished by even those that may have separated. Hence it is that among such uterine brothers also as may have separated,—if one dies,—his property shall go to the other uterine brother, whose right over the property cannot entirely disappear.—(*Medhātithi.*)

'*Deprived of his share*'—by reason of such disabilities as 'impotence' and the like as appear after the partition;—or if some one dies, after partition,—'*his share*'—which would have been allotted to him,—'*does not become lost,*'—*i.e.*, it should not be made to disappear by being divided among the coparceners.—What should be done is that '*those reunited with him,*'—either uterine brothers or half-brothers,—or 'uterine sisters' shall take it. That is to say, (*a*) if there is a reunited uterine brother, the share shall go to him;—(*b*) if there is no reunited uterine brother, it shall go to the reunited half-brother;—(*c*) if there are no reunited half-brothers also, then it shall go to the uterine sisters;—(*d*) in the absence of such sisters, it shall go to the sons of the uterine brothers; and (*e*) in the absence of these last, to non-uterine brothers and others also.—But all this shall be done only if the son or wife or daughter or mother or father of the disinherited (or dead) man is not there.—Others have explained this text as meaning that 'if a man dies before the partition of milk and other things (?), then at the time of partition the uterine brothers and others shall take away the share that would have gone to the dead person.'—Others again have declared that this lays down the rule of partition to be adopted if there is death of one of those brothers who, after division, had become reunited.—(*Sarvajñanārāyaṇa.*)

If among the brothers any one becomes deprived of his share, by becoming a renunciate or from other disability,—or dies,—his share does not become lost.—His uterine brothers, coming together,—as also his uterine sisters,—shall divide his share in equal shares.—Similarly, among uterine brothers and half-brothers also,—those brothers and half-brothers shall divide the share equally among themselves who may have combined in property (with the disabled person) and may, on that account, have common interests.—This, however, should be understood to apply to only those cases where the disabled man has no son or wife or father or mother.—(*Kullūka.*)

If any one is deprived of his share,—by being away in a distant country, or by having become an outcast.—the uterine brothers '*coming together,*' at the time of partition, and coming to an agreement among themselves, shall divide the share of the brother who has gone away or become a renunciate, etc.;—in case there are no uterine brothers, then those brothers that may have been reunited with him;—in the absence of these latter also, his uterine sisters. Inasmuch as this lays down *equal division,* it has been declared after the rule relating to division among reunited coparceners; and not because it refers to the case of reunited coparceners. In fact this refers to cases where the man has no son and other heirs; as it is only thus that it would be consistent with other *Smṛtis.*—(*Nandana.*)

If either the eldest or the youngest of the brothers does not obtain his share—on account of his having become a renunciate or so forth,—or if the middlemost brother dies—his share does not become lost.—His uterine brothers coming together shall divide it equally ; also those step-brothers who may have been *reunited* with him ; as also his uterine sisters.—(*Rāmachandra.*)

Among the brothers if any one becomes a renunciate or dies,—his share all his uterine brothers shall divide among themselves,—as also his unmarried sisters. What is meant by this has been clearly stated by Yājñavalkya in the text '*Samsṛṣṭinastu samsṛṣṭī*, etc.' All this, only if the man has left no son or wife or father or mother.—(*Rāghavānanda.*)

'*Amshapradāna*' is *share* ; of which the '*hāni*' is *being disentitled* by reason of becoming a renunciate or an outcast and the like.—'*His share does not become lost*' ;—*i.e.*, it has to be allotted.—If the man has any uterine brothers 'reunited' with him, then these will take that share ; but even uterine brothers shall not take it if they have not been 'reunited' ; if there are no 'reunited' uterine brothers, all the uterine brothers, coming together, shall divide that share among themselves equally, not more nor less. If there are no uterine brothers, the uterine sisters shall divide that share among themselves. If there are no uterine sisters, then half-sisters and half-brothers shall take it.—(*Aparārka.*)

Among reunited brothers, if any one—the eldest, the middlemost or the youngest—should become deprived of his share, *at the time of partition* [this is what is meant by '*amshapradānataḥ*'],—by reason of his betaking himself to another life-stage, or on account of such heinous crimes as the killing of a Brāhmaṇa and the like,—or if he should die,—'*his share does not become lost*' ; therefore his share is to be taken out and kept aside, and it shall not become merged in the property of the reunited brothers ; the share thus taken out shall be disposed of in the following manner : '*His uterine brothers shall divide it*' ; *i.e.*, the share taken shall be divided by all his brothers—those also who were not 'reunited' with him, and those that may have gone abroad to foreign countries, all of them coming together,—equally—not in larger or smaller shares ;—as also those 'brothers,'—*i.e.*, step-brothers, who may have been 'reunited' with him,—and also his uterine sisters—shall divide it equally. That is, they shall divide the share into equal shares, each of them taking a share.—[On this, the *Bālambhaṭṭī* has the following notes : '*another* life-stage,' *i.e.*, that of the hermit or the wandering mendicant.—The first sentence speaks of 'brothers' alone, and the second sentence speaks of 'reunited' brothers ; hence the two together are taken to mean *all brothers, reunited as well as not-reunited* ; the first sentence having specified the brothers as '*uterine*,' the second sentence has to be taken as referring to *half-brothers* ; otherwise the second sentence would be clearly superfluous. '*Sanābhayaḥ*,' uterine.—The 'half-brothers' meant are those belonging to the same caste as the disentitled person ; as the shares of brothers of different castes have been declared to be in the proportion of 4, 3, 2, 1.]—(*Mitākṣarā*, pp. 831—833.)

Among reunited brothers, if any one becomes deprived of his share, by becoming a wandering mendicant, etc.,—or dies,—his share does not become lost.—Who then is to receive that share ?—The term '*sodaryāḥ*' ('uterine')

(third line) is to be construed with '*bhrātaraḥ*' ('brothers') (fourth line); hence the meaning is that 'among brothers those who fulfil both the conditions of being *uterine* and *reunited* shall take the said share';—as also 'uterine sisters,' but only those that are not married; those married having taken their husbands' *gotra* (and hence not '*sanābhi*,' 'consanguineous,' with their brothers);—says the *Prakāsha*.—(*Vivādaratnākara*, p. 601.)

After reuniting, if any one of them,—either by death or by betaking himself to another life-stage,—becomes incapable of receiving his share,—that share '*does not become lost*.' To whom that share goes is explained in the second verse, which means that it goes to *such of his uterine brothers as have been reunited with him*.—(*Vivādachintāmaṇi*, p. 246.)

Even when a man becomes disentitled to receive a share, his share has to be there.—'*Hīyēta*,' *i.e.*, becomes incapable of receiving his share by becoming a wandering mendicant, etc.—(*Vivādachandra*, 25. 1-2.)—Only such others shall take that share as have been 'reunited' with him;—such is the view of the *Ratnākara* and the *Smṛtisāra*. According to the *Bālarūpa*, however, both the conditions should be fulfilled by the 'brothers,'—*being reunited* as well as *being uterine*, and what the text is meant to assert is that the *unreunited uterine brother* and the *reunited step-brother* shall receive equal shares.—(*Ibid.*, 25. 1—4.)

Among reunited brothers, if any one—the eldest, the youngest or the middlemost,—lose his share at the time of partition,—either by reason of betaking himself to another life-stage or by becoming an outcast,—or if he dies,—'*his share does not become lost*'; therefore his share should be taken out and set aside, and it should not be divided by the coparceners.—What should be done with it after it has been set aside is explained in the second verse. In this verse we have the two words '*sodaryāḥ*' (uterine) and '*bhrātaraḥ*' (brothers) in two separate sentences; consequently the former should be taken as denoting the *uterine brothers*, and the latter as denoting the *half-brothers*; otherwise there would be superfluity. Then again, inasmuch as the term '*Samsṛṣṭāḥ*' (reunited) occurs in the second sentence,—and as that term does not appear along with the term '*bhrātaraḥ*' in the first sentence,—it follows that such uterine brothers also are meant to be included as are *not reunited*. Thus the meaning of the second verse is as follows: (*a*) The uterine brothers, even those *not reunited*, and those who may have gone abroad to foreign countries,—all of them coming together shall divide the said share equally—not more or less—among themselves;—(*b*) similarly the '*brothers*,'—*i.e.*, step-brothers, belonging to the same caste as the disentitled person, who had been reunited with him; and also his uterine sisters. That is to say, all these persons—(*a*) all uterine brothers, (*b*) reunited step-brothers of the same caste, and (*c*) uterine sisters—shall divide the share equally among themselves.—As regards the step-brothers belonging to different castes, the division among them shall be in the proportion of 4, 3, 2, 1.—(*Madanapārijāta*, pp. 678-679.)

All the persons mentioned in the second verse,—*i.e.*—(*a*) uterine brothers, (*b*) uterine sisters, and (*c*) step-brothers—are to divide the said share; and it is quite clear—from the words '*Sarve*,' and '*Sahitāḥ*'—that (*a*) reunited step-brothers, and along with them (*b*) the uterine brothers, and (*c*) uterine sisters—all conjointly are the persons who are to do the dividing.—Some people

have explained the verse to mean as follows : (a) 'The *uterine brothers* shall take the said share, if they have been *reunited* (with the disentitled person), not if they have not been reunited ; (b) in the absence of *reunited uterine brothers*, all uterine brothers shall come together and divide the share equally among themselves ; (c) in the absence of all uterine brothers, the uterine sisters shall take the share ; (d) in the absence of uterine sisters, the half-brothers shall take it.'—This explanation, however, cannot be accepted, as it involves several forced constructions and is inherently inequitable.—(*Smṛtichandrikā*, pp. 703-704.)—'*Should be deprived*'—by becoming an outcast, for instance.—(*Ibid.*, p. 681.)

The purely *uterine brothers* are mentioned by the term '*Sodaryāḥ*,' and the *reunited step-brothers* are mentioned by the term '*Saṃsṛṣṭāḥ*' ; and what is meant is that both these groups have to do the dividing jointly ; otherwise there would be superfluity.—(*Dāyabhāga*, p. 204.)

If among reunited persons any one—the eldest, the youngest or the middlemost—becomes disentitled from receiving his share at the time of partition,—either by reason of having become an outcast or of having taken to another life-stage,—or if he should die before having received his share,—then '*his share does not become lost.*'—(a) In the first place, it should be given to his son or other heirs ;—(b) if there are no such heirs, it shall be given to his uterine brothers, even those that may not have been reunited with him ; as also those who may have gone abroad and have come back ; those step-brothers who may have been reunited with him, and also the uterine sisters of the dead person ; —all these shall divide the property among themselves.—(*Vīramitrodaya*, p. 679.)

If anyone should become deprived of his share,—before the allotment of shares,—on account of his renunciation and such causes,—his share shall go to the persons mentioned in the second verse.—(*Smṛtitattva* II, p. 193.)

'*Deprived of his share*'—by reason of his betaking himself to another life-stage or becoming an outcast and so forth.—The terms '*Sodaryāḥ*' and '*bhrātaraḥ*' should be construed together (meaning 'uterine brothers') ; also those that were '*Saṃsṛṣṭāḥ*,'—*i.e.*, the wife, the father, the grandfather, the step-brother, the uncle's sons and others who may have been reunited with the disentitled person.—(*Vyavahāramayūkha*, pp. 149-150.)

360. याज्ञवल्क्य 2. 138.] संसृष्टिनस्तु संसृष्टी—सोदरस्य तु सोदरः ।
दद्याच्चापहरेच्चांशं [*v.l.*, वांशं] जातस्य च मृतस्य च ॥

(A) If a reunited coparcener has died, his reunited coparcener shall give his share to the son that may be born to that coparcener ; he shall himself take that share [if no such son is born] ;—(B) but it is the uterine brother who will deal thus with the share of a uterine brother.—(*Yājñavalkya*, 2. 138.) [Quoted in *Vivādaratnākara*, p. 603 ; *Vivādachintāmaṇi*, p. 247 ; *Vivādachandra*, 25. 1–6, 26. 1–3 ; *Madanapārijāta*, p. 676 ;

Smṛtichandrikā, p. 704; *Parāsharamādhava*, p. 361; *Dāyabhāga*, p. 191; *Vīramitrodaya*, p. 677; *Smṛtitattva* II, p. 192; *Vyavahāramayūkha*, pp. 147, 151; *Vibhāgasāra*, 17. 2—9; *Dāyanirṇaya*, 7. 1—10.]

NOTES

See III, 96.

When a person, having become separated, comes, for some reason, to unite and live with the father or brother (from whom he had separated),—he is called '*Samsṛṣṭī*';—'reunited,' while such reunited father and sons are living together, if another son happens to be born to the father, he also shall be given a share; and if a son dies, his share shall be taken up.—'*Sodarasya tu sodaraḥ*' ('the uterine brother, that of the uterine brother') should be taken as referring to cases where the partition has been made through the mothers; and as applying to the son born after partition, in a case where the father has no property.—(*Vishvarūpa.*)

It has been said that when one of the brothers has died sonless and has left no wife or daughter or parents,—his property goes to his brothers; further details are here laid down in connection with that general rule.—When a divided property is reunited with another divided property, it is what is called '*Samsṛṣṭa*,' 'reunion'; one who has this union is called '*Samsṛṣṭī*,' 'reunited.' When one such 'reunited' person dies, his property shall be taken by a *reunited* brother;—the 'brother' meant here is the *uterine* brother, and not a *half-brother*, even though the latter be reunited.—If a son is born to the reunited brother after his death, then the surviving reunited brother shall give the share of the dead brother to that son. This latter statement is made in the present context only by the way.—The rule laid down here is expressed obversely in the next verse.—(*Aparārka.*)

(A) Here we have an exception to the rule that when a man dies sonless his property goes to his wife, daughter, etc., etc.—(*Yājñavalkya*, 2. 137.)—When the property once divided is again united, it is called '*Samsṛṣṭa*,' 'reunited property'; and the possessor of such property is called '*Samsṛṣṭī*,' the 'reunited coparcener.' The 'reunion' meant here is not that with any one and every one, but only that with the father or brother or uncle; as declared in Bṛhaspati's text—'*Vibbakto yaḥ punaḥ pitrā, etc.*'—When such 'reunited' coparcener dies, the surviving 'reunited coparcener' shall, at the time of partition, make over the share of the dead coparcener to the son that may be born to this latter after his death, from a wife in whom signs of pregnancy were not perceptible (during the husband's lifetime). In case no son is born, the surviving reunited coparcener shall himself take that property, not his wife or daughter and the rest.—To the rule (A) that 'the reunited coparcener shall take the property of a dead reunited coparcener,' the text adds an exception:—(B) '*Sodarasya tu sodaraḥ*,' '*the uterine brother will deal thus with the share of the uterine brother*'; the words '*Samsṛṣṭinaḥ samsṛṣṭī*' ('reunited coparcener—of the reunited coparcener') have to be construed over again here also; so that the meaning of this second sentence is that 'when a reunited uterine brother dies, his share shall be given to his posthumous son, by the surviving reunited

uterine brother; and if there is no son, the surviving reunited *uterine* brother shall take the property of the dead reunited *uterine* brother.' Thus then, in a case where the 'reunion' has been among several brothers,—some uterine, some half-brothers,—it is the *uterine* brother who shall receive the share of the dead uterine brother,—*not the half-brother, even though he is a reunited coparcener*; it is in this sense that the second sentence (B) is an exception to the first sentence (A).—(*Mitākṣarā.*)—[On this, the *Bālambhaṭṭī*—no significance attaches to the singular number in the text, in the terms '*saṃsṛṣṭi*' and '*sodaraḥ*'; so that when there are several of these, the property shall be divided among them. The explanation provided in the *Mitākṣarā* rejects the explanation given by the older writers. The sense is as follows: when there are three or more reunited coparceners, if one of the brothers dies after his wife has conceived, and division among the survivors is found necessary,—and is done while the fact of the pregnancy is still uncertain or unknown,—if a son is born subsequently, his father's share is to be given to this son;—if no such son is born, then the said share is to be divided among the surviving reunited coparceners.]

It has been declared that when a man dies without a son, his property goes to his wife and others. The present text lays down an exception to that rule.—(A) If a 'reunited coparcener'—as defined in Bṛhaspati's text—'*vibhakto yaḥ, etc.*,'—dies, his share is to be taken by his surviving reunited coparcener, not by his wife and other relations. (B) If a son—who was in his mother's womb at the time of his father's death—is born after the death of the 'reunited coparcener,'—his father's share shall be given to that son.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

If a 'reunited coparcener' dies, his property shall be taken by the other reunited coparcener; and the uterine brother shall take the property of his uterine brother; *i.e.*, where the uterine brother and the half-brother are both 'reunited coparceners' of the dead man, the property of this dead man shall be taken by the uterine brother.—(*Vivādaratnākara*, p. 604.)

Halāyudha has explained '*jātasya*' as '*jīvataḥ*,' *while living.* Others have explained the meaning to be that where the father and son have become 'reunited,'—and another son is born to the father after the previous partition,—then, on the father's death his 'reunited' son shall give the father's share to that posthumous son.—Of two reunited coparceners, if one dies, the other reunited coparcener is entitled to the dead man's share. If among the reunited coparceners of the dead man, one is his uterine brother and the other is not his uterine brother, then the dead man's share goes to the uterine brother. Similarly, in case the 'reunion' has been between the father and a son,—and there is another son also who continues to be separate (and is not 'reunited'),—then it is the 'reunited' son who receives the father's share. This is only right, in view of the aforesaid definition of 'reunion' given by Bṛhaspati; specially as the claims of the other sons over the father's property have been set aside by their separation from him; while the special claims of the 'reunited' son have been created by the 'reunion.'—Thus then the upshot of the whole is that the share of the 'reunited' father goes to the sons born

after the partition,—and when there are no such sons, it goes to the 'reunited' son or brother and other reunited persons,—but not to the son who has not been 'reunited.'—(*Vivādachintāmaṇi*, pp. 247-248.)

If a 'reunited coparcener' dies, his surviving reunited coparcener shall give the dead man's share to his son.—In a general way the fact of being 'reunited' is the ground for one coparcener taking the property of another.—(*Vivādachandra*, 25. 1—6.) In a case where the father has become 'reunited' with one of his sons, the father's share shall be taken by that 'reunited' son, and not by those sons who have not been 'reunited' with him, but have remained separate. The *Smṛtisāra* also says the same thing.—(*Ibid.*, 29. 1—3.)

The property that has been divided and again combined is called '*saṃsṛṣṭa*,' 'reunited property'; one who has such property is the '*saṃsṛṣṭī*,' the 'reunited coparcener.' If one of the reunited coparceners dies without leaving a son or a grandson,—even though his wife may be alive,—his property shall be taken by his surviving 'reunited coparcener.'—No significance attaches to the singular number in the term '*saṃsṛṣṭī*,' 'reunited coparcener'; so that if there are several 'reunited coparceners,' they shall divide the property among themselves and also support the widow of the dead coparcener.—The 'reunion' spoken of here is possible only with one's father, brother or uncle,—as declared in Bṛhaspati text—'*Vibhakto yaḥ, etc.*'—If, however, the widow of the dead coparcener, whose pregnancy was not known before, should give birth to a posthumous son, then they shall give to this son the share of the dead coparcener.—Further, the property of a reunited coparcener is not taken by any and every 'reunited coparcener,' but only that 'reunited coparcener' who is his uterine brother,—not one who is only his half-brother.—(*Madanapārijāta*, pp. 676-677.)—The essence of the whole law on this subject is as follows:—(*a*) In a case where the person who has died sonless has no 'reunited' half-brothers, his property shall be taken by that *uterine* brother of his who may have been 'reunited' with him;—(*b*) in a case where there is no 'reunited' *uterine* brother, the property shall be taken by that half-brother of his who may have been 'reunited' with him; and in this case if the half-brothers belong to the same or to different castes, the property shall be divided among them in the proportion of 4, 3, 2, 1;—(*c*) in a case where among the 'reunited coparceners,' there are *uterine* brothers as well as half-brothers, *they shall all take the property*;—[?—or, 'the uterine brothers shall take the property' as reproduced in *Bālambhaṭṭī* on 2. 139];—(*d*) in a case where the uterine brothers are not 'reunited' while the half-brothers are 'reunited,' there also the uterine brothers as well as the half-brothers shall take the property;—if the half-brothers are not 'reunited' and the uterine brothers are 'reunited,' then the uterine brothers alone shall take the property;—(*e*) if, among the uterine brothers, some are 'reunited' and some *not* 'reunited,' then only those uterine brothers shall take the property who fulfil both the conditions of being 'reunited' and being 'uterine brothers.'—In all cases the widow obtains her maintenance.—The distinction that has been made between brothers born of the same mother and brothers born of different mothers has to be made also between those uncles who are the father's uterine brothers and those uncles

who are the father's half-brothers ;—such is the view of some people.—But it is not right; because the text speaks of the 'uterine *brother*' taking the property of the 'uterine *brother*'; and there is no ground for extending the scope of the connotation of the term 'brother' here.—(*Ibid.*, pp. 680-681.)

The meaning is that the property of a 'reunited' brother is to be taken by his 'reunited' brother, not by his wife or other relations.—(*Smṛtichandrikā*, p. 702.)

The meaning is as follows: If one of the 'reunited coparceners' dies, his property shall be given by his surviving 'reunited coparcener' to the posthumous son born to the former from a mother in whom signs of pregnancy had not been perceived at the time of partition ;—in case there is no such son, the surviving coparcener shall himself take the property, which shall not go to the dead man's wife or other relatives ;—his wives and unmarried daughters are to receive mere maintenance.—(*Parāsharamādhava*, p. 361.)

This text indicates the fact that the term '*bhrātṛ*' ('brother') denotes the uterine as well as the non-uterine brother.—(*Dāyabhāga*, p. 191.)

If any one among 'reunited persons' dies without leaving a son or a grandson, the property would appear to devolve upon his 'wife, daughter, etc., etc.,' according to the general rule; it is to this rule that the present text provides an exception ; and the meaning is that the property of a 'reunited coparcener' shall be taken by his 'reunited coparcener,' not by his wife or other relations.—The next sentence '*sodarasya tu sodaraḥ*' sets up an exception to the rule '*samsṛṣṭinastu samsṛṣṭī*.' The terms '*samsṛṣṭinaḥ samsṛṣṭī*' have to be construed also with the terms '*sodarasya sodaraḥ*'; so that what is meant is as follows :—(*a*) The reunited uterine brother shall give the share of that dead brother to his son ;—(*b*) In case there is no son or grandson or great-grandson of the dead brother, he shall take the property himself.—(*c*) In case among the 'reunited coparceners,' some are uterine brothers and some not uterine brothers,—the property of the 'reunited' *uterine* brother shall be taken by 'reunited' *uterine* brother, not by the brother who is *not uterine*.—(*Vīramitrodaya*, p. 677.)

This shows that in some cases even a half-brother's rights are equal to those of the uterine brother, if the former is a 'reunited coparcener.'—(*Smṛtitattva* II, p. 192.)

This is an exception to what has been laid down by Yājñavalkya (2. 135) regarding 'the wife, the daughters, etc.,' succeeding to the property of one who dies sonless. The meaning of this is as follows: What entitles one to inherit the property of a sonless man is the fact of one being 'reunited' with him, not that of being his 'wife or daughter, etc., etc.'—Vijñaneshvara, Madana and others have held the view that the present text refers to cases where the dead man has left no son or grandson or great-grandson; and consequently on the death of one of a number of 'reunited coparceners,' his property shall be taken by his surviving 'reunited coparcener,' even though the dead man's wife and other relatives be there.—But this is open to question. In fact the present text has no reference to the dead man being 'sonless'; if the qualification 'sonless' were to be taken as understood, the result would be that, of two sons, or of a son and a grandson,—one of whom is 'reunited'

with the father and the other is not,—both will be entitled to the same share; hence, if 'sonless' were taken as understood here, this text could have no application to a deceased 'reunited coparcener' who dies leaving sons. This result—that the reunited son and the son not reunited would both share the father's property equally—would be contrary to popular usage. . . . . . The first line contains two propositions—(*a*) the property of one dying reunited is taken by the surviving reunited coparcener or coparcener; (*b*) if there is a competition between two reunited coparceners,—one of whom is a full brother and the other a half-brother,—then the reunited full brother takes the property of the deceased reunited coparcener. The words '*sodarasya tu sodaraḥ*' are an exception to the rule '*saṃsṛṣṭinaḥ saṃsṛṣṭī*'; and these latter words are to be understood as extended to the clause '*sodarasya sodaraḥ*.'—The second line of the verse is an independent sentence; it refers to a case where, when a 'reunited coparcener' died, his wife was pregnant, which however was not visible at the time, and therefore his property was divided by the surviving 'reunited coparceners' among themselves. In such a case, if a son is born, the surviving 'reunited coparcener' (such as the paternal uncle of the posthumous son) should hand over to the posthumous son the share of the deceased 'reunited coparcener.' But if no such son is born, then the surviving 'reunited coparcener' should take that share himself. Here the mere fact of *being a son* determines the right to take the share of the deceased father, and not the fact of *being born after partition* among the surviving 'reunited coparceners.' To suppose the latter as the determining factor serves no purpose and is cumbrous, and leads to the result that if a son were born to a 'reunited coparcener' in a distant country, even before partition,—and that fact was not known to the surviving reunited coparceners,—then the son would not be entitled to share his father's wealth. Therefore a son, born before partition, even though not reunited with the father, should receive from the 'reunited' uncle and others the share of his father.—(*Vyavahāramayūkha*, pp. 147-148.)

'*Jātasya*' is equivalent to '*jīvataḥ*,' *living*,—says Halāyudha.—According to others, the meaning is that in case where after the 'reunion' of the father with his son, another son is born to the father,—if the father dies, the share of the father should be given to that new-born son.—The meaning is that if one of the reunited coparceners dies, his share goes to another reunited coparcener;—and of these latter, if one is a uterine brother and the other is not so, then the share of the dead man goes to the uterine brother.—Similarly in a case where the father and son are the reunited coparceners; because the text speaks of 'reunited coparceners' in general, without any specification (as to its referring to the case of *brothers* only).—It will not be right to argue that, in accordance with the rule—'*Paitāmahañcha pitryañcha, etc.*,' the property in question should go to all the coparceners.—Because that right becomes set aside by the division.—The conclusion on this point is as follows: The father's share goes to the sons born after the previous partition;—if there are no such sons, then it goes to the reunited sons;—if there are no such sons, then to the reunited uterine brothers, not to the *unreunited* son. This is what has been declared by Manu in the text—'*Ūrdhvam vibhāgājjātastu, etc.*'—(*Vibhāgasāra*, 17. 2—9.)

The meaning is this—when a member of a joint family dies, his coparcener should make over his share of the property to his child; if there is no child, then the coparcener himself takes that share. '*The uterine brother will deal, etc.*'—*i.e.*, when the uterine brother has died and has left no son or father or mother.—(*Dāyanirṇaya*, 7. 1—10.)

361. याज्ञवल्क्य 2. 139.] अन्योदर्यस्तु [*v.l.* (*a*) नान्योदर्यस्तु, (*b*) नान्योदर्यस्य] संसृष्टी नान्योदर्य—[*v.l.* (*a*) र्यो, (*b*) र्यात्]-धनं हरेत्। असंसृष्ट्यपि चादद्यात् सोदर्यो नान्यमातृजः [*v.l.*, मातृकः]॥

Even though reunited, the non-uterine coparcener (half-brother and the like) shall not take the property of a non-uterine coparcener; even though not reunited, the uterine brother shall take the property, not the coparcener born of another mother.—(*Yājñavalkya*, 2. 139.) [Quoted in *Medhātithi*, 9. 212; *Vivādaratnākara*, p. 604; *Vivādachintāmaṇi*, pp. 248-249; *Vivādachandra*, 24. 2—10; 25. 2—6; *Madanapārijāta*, pp. 676-677; *Smṛtichandrikā*, pp. 703-704; *Parāsharamādhava*, pp. 362-363; *Dāyabhāga*, p. 193; *Vīramitrodaya*, p. 678; *Smṛtitattva* II, pp. 192, 194-195; *Vyavahāramayūkha*, pp. 148, 151; *Vibhāgasāra*, 18. 1—5; *Dāyanirṇaya*, 7. 2—4.]

NOTES

See also III, 96.

Some people read this verse as containing the explanation of the preceding verse.—If there is a uterine brother, the half-brother can never receive the property, even though he be 'reunited'; while the uterine brother would be entitled to receive it, even though he be not reunited.—(*Vishvarūpa.*)

What has been asserted affirmatively in the preceding verse is affirmed negatively in the first line here; the meaning of which is quite clear.—The second line is in answer to the question as to what shall be done in a case where the half-brother is 'reunited,' and the uterine brother is not so. The meaning is that, even though he be not 'reunited,' the uterine brother shall take the property, not the half-brother even though he be 'reunited.' The 'reunited' is meant to be the qualification of the half-brother which is implied by the particle '*api.*' Thus the meaning comes to be this.—If there is a person fulfilling both the conditions of *being the uterine brother* and *of being 'reunited,'* then he shall receive the property of his 'reunited' uterine brother; when, however, the condition of being 'reunited,' is fulfilled by the half-brother, then it would be the character of *being the uterine brother* that would entitle the man to receive the property, and not the character of being 'reunited.'—(*Aparārka.*)

In a case where a 'sonless' 'reunited coparcener' [reunited with a half-brother—says *Bālambhaṭṭī*] has died, and has left a half-brother 'reunited' with him, and an uterine brother *not* 'reunited' with him,—who shall receive the property of the dead person? The answer is that both shall divide it between themselves, and the present text gives a reason for this: (*a*) The half-brother who is 'reunited' shall receive the property;—but (*b*) the half-brother who is *not* 'reunited' shall not receive the property [reading '*nānyodaryo dhanam*' for '*nānyodaryadhanam.*'] By means of these two affirmative and negative propositions what is meant is that in the case of the half-brother, it is the character of being 'reunited' that entitles him to receive the property. The term '*asaṃsṛṣṭyapi*' (which has been taken as qualifying '*anyodaryaḥ*' of the first line) is to be taken with the next sentence also, which means that 'even one who is not reunited shall receive the property of one who is reunited with some other person).—Who is such a person?—The answer is given by the next word '*saṃsṛṣṭaḥ,*' which means '*united* in the womb,' *i.e., the uterine brother.* What this sentence declares is that the character of *being the uterine brother* is the ground for the property being taken by the uterine brother who is *not reunited.*—The word '*saṃsṛṣṭaḥ*' (which has already been taken as meaning that the uterine brother is to receive the property even when he is 'not reunited') is to be construed also with the next sentence, in which case it would mean 'the reunited coparcener' and shall qualify the term '*anyamātṛjaḥ,*' the *half-brother.* This sentence is to be explained after adding to it the particle '*eva,*' the meaning being—'the half-brother alone shall not take the property of a reunited coparcener, even though he be a reunited coparcener.' Thus, by the reason of the particles '*api*' and '*eva*' (supplied), the meaning comes to be that in a case where the uterine brother is *not reunited,* and the half-brother is *reunited,* the property is to be divided between the two; because each of the two fulfills one of the conditions, which justifies his receiving the property [the uterine brother fulfills the condition of *being the uterine brother,* and the half-brother fulfills the condition of *being reunited*].—This has been clear in Manu (9. 210—212) [see above, the text '*yeṣām jyeṣṭhaḥ, etc.*'—(*Mitākṣarā.*)]—[On this the *Bālambhaṭṭī* describing the essence of the law on the subject practically reproduces the summing up of the law given in *Madanapārijāta,* p. 680 (see pp. 418-19 above.)]

In a case where the uterine brother and the half-brother are both among the 'reunited coparceners,' the property shall be taken by the uterine brother, not by the half-brother; the second line supplies the reason for this: When a 'reunited coparcener' who has died has left no wife or daughter, his property shall be taken by his uterine brother, even though he be not among his 'reunited coparceners'; and so long as even such a uterine brother is there, the half-brother shall not take the property. Even when both the uterine brother and the half-brother are among the 'reunited coparceners,' the prior claim of the uterine brother is due to the comparative nearness of his relationship to the dead man.—The phrase '*apicha*' is meant to include what Vasiṣṭha has said to the effect that 'so long as an undivided uterine brother is there the property shall not be taken by the wife or other relations of the dead man.'—In these two verses the particle '*tu*' has been repeated thrice, the

first serves to preclude the wife and others from the property, the second precludes such 'reunited coparceners' as the uncle and the rest, and the third precludes the notion that the undivided half-brother is *not* entitled to the property.—(*Vīramitrodaya-Ṭīkā*, on *Yājñavalkya.*)

The meaning of this verse is as follows: 'Even though reunited, the half-brother does not receive the property, if a uterine brother is there, though not reunited; while among the uterine brothers, he alone shall receive it who has been reunited. and not any other, notwithstanding his uterine character . . . When, however, there are no uterine brothers at all, the property shall be taken by such half-brothers as have been reunited, and not others.—(*Medhātithi*, on Manu, 9. 212.)

This text lays down what is to be done in a case where one of the reunited coparceners has died, leaving one uterine brother *not reunited* with him, and a half-brother *reunited* with him. (*a*) The first sentence is '*nānyodaryo dhanam harēt asamsṛṣṭi*,' 'the half-brother shall not take the property, if he has been *not reunited*'; and this proposition asserts that the half-brother can take the property only if he has been *reunited.* (*b*) The term '*asamsṛṣṭī*' has to be construed also with what follows it; so that the meaning of the second sentence would be that 'even one who is not reunited may take the property';—who is that person ?—The answer is '*samsṛṣṭaḥ*,' *i.e.*, 'united in the womb,' *i.e.*, the uterine brother. This sentence asserts that a person not reunited may take the property if he fulfills the condition of being a uterine brother. So that both the persons - the *half-brother* fulfilling the condition of being *reunited*, and the *unreunited* brother fulfilling the condition of being *uterine*,—fulfilling the conditions antecedent to the taking of the property, both of them are entitled to receive the property.—The reading adopted in the *Kalpataru* is '*nānyodaryadhanam harēt*' which must be regarded as a mistake of the copyist; because the reading in the original *Yājñavalkya-Smṛti*, as also in the *Mitākṣarā*, the *Pārijāta*, the *Prakāsha* and *Halāyudha* is '*nānyodaryo dhanam harēt.*' But in reality, both the readings give the same sense.—(*Vivādaratnākara*, pp. 604-605.)

This text asserts what should be done in a case where there is a *reunited half-brother* and a *unreunited uterine brother.* The sentence is to be broken up and construed in the following manner: (*a*) 'The half-brother, who is 'reunited' shall take the property of his half-brother,—but not if he is *not reunited*; (*b*) but the uterine brother shall take the property of his uterine brother, even though *not reunited.*'—If the reading is *nānyodaryo dhanam harēt,*' the construction is easy. The clause '*nānyamātṛjaḥ*,' 'not the half-brother,' would, in that case, be a mere reiteration. Thus the meaning comes to be that (*a*) what entitles the half-brother to the property is the fact of his being *reunited*, and (*b*) what makes the uterine brother entitled to it is the fact of his being *uterine.*—(*Vivādachintāmaṇi*, p. 249.)

In a case where the half-brother is 'reunited' and the uterine brother is not 'reunited,' both of them shall share the property. The first sentence is '*anyodaryaḥ samsṛṣṭī san samsṛṣṭidhanam harēt*' ('the half-brother, if reunited, shall receive the property of the reunited coparcener');—the second

sentence is '*nānyodaryaḥ asamsṛṣṭī dhanam harēt*' ('the unreunited half-brother shall not receive the property'); so that the idea is confirmed that what entitles the half-brother to receive the property is the fact of his being reunited.—The term '*asamsṛṣṭī*,' 'unreunited,' is to be construed both ways; so that we get also the statement that 'the uterine brother, even though not reunited, shall take the property.' The clause '*nānyamātṛjaḥ*' represents the third sentence, which means among *unreunited* coparceners, other than the father, it is the uterine brother alone that can take the property, none else.—Some people read '*nānyodaryo dhanam harēt*'; but the meaning remains the same.—(*Vivādachandra*, 25. 2—6.)

(*a*) '*Anyodaryaḥ*,' the half-brother,—if 'reunited,' shall take the property;—(*b*) the half-brother, if not 'reunited,' shall not take the property.—The sentence beginning with '*anyodaryaḥ*' and ending with '*asamsṛṣṭī api*' means that what makes the half-brother entitled to receive the property is the fact of his being 'reunited.'—The term '*asamsṛṣṭī*' is to be construed both ways; so that the next sentence we get is—'*asamsṛṣṭī api chādadyāt samsṛṣṭaḥ*,' which means that 'even though not reunited,—*i.e.*, though not having had his divided property joined to the property of the dead coparcener,—the *samsṛṣṭa*, *i.e.*, the uterine brother, shall take the property of the dead coparcener. This means that what makes even the *unreunited* uterine brother entitled to receive the property is the fact of his being *uterine*.—Further, the word '*samsṛṣṭaḥ*' is to be construed also with what follows; so that we get yet another sentence:—'*samsṛṣṭo nānyamātṛjaḥ*'; but in this sentence the word '*samsṛṣṭaḥ*' stands for the *reunited coparcener*, not for the *uterine brother* (as in the preceding sentence); and the meaning of this sentence is that 'even though he be a reunited coparcener of the dead man, he *alone*, shall not take the entire property' (this '*eva*,' 'alone' being supplied in consideration of Manu's text on the subject). Thus the meaning comes to be that 'in a case where the uterine brother is *not* a reunited coparcener of the dead man, and the half-brother *is* a reunited coparcener, the uterine brother shall receive a share in the property by virtue of his being a uterine brother, and the half-brother shall receive a share by virtue of his being 'reunited.'—(*Madanapārijāta*, pp. 676-677.)

The first line refers to cases where the dead man has left a uterine brother.—(*Smṛtichandrikā*, p. 703.)—The *Smṛtichandrikā* (pp. 704-705) states in detail the explanation propounded in the *Mitākṣarā*, and the *Madanapārijāta*, and then criticises it in the following words:—Such an explanation can satisfy only the propounders of the explanation, not those who understand the text; as the meaning that is deduced with great ingenuity is not expressed by the words at all. The most reasonable way is to take the texts of Manu and Yājñavalkya in their ordinary sense and to reconcile them by taking as pertaining to different subjects; Manu's text being taken as pertaining to cases where there are both moveable and immoveable properties, and Yājñavalkya's text as referring to cases where there is moveable property only or immoveable property only.—(*Smṛtichandrikā*, pp. 705-706.)

The half-brother shall receive the property of his half-brother, if he has been 'reunited' with him, not if he has not been reunited;—The uterine brother

may receive the property of his uterine brother, even though he be not reunited;—and the property shall not be taken by the reunited half-brother only.—(*Parāsharamādhava*, p. 362.)—Some people explain the second line as follows: In a case where there are reunited half-brothers, and unreunited uterine brothers, the property shall be taken by the unreunited uterine brothers only, not by the half-brothers, even though reunited. The text of Manu—'*Yeṣām jyeṣtaḥ, etc.*'—which lays down that the reunited half-brothers and the unreunited uterine brothers are all entitled to share the property,—should be taken as applying to cases where there are both kinds of property, moveable as well as immoveable; and the text of Yājñavalkya as applying to cases where there is moveable property only, or immoveable property only.—People may accept whichever explanation appears proper.—(*Parāsharamādhava*, p. 363.)

The meaning is that the half-brother, if reunited, should be the first to receive the property,—not that he *alone* shall take it. The question arising as to whether while receiving it first, he shall preclude the uterine brother, or he shall share it with him,—the answer to this is given in the second line, into which the word '*sodaraḥ*' has to be introduced; the meaning being that 'the uterine brother, even though not reunited, shall take the property';—and 'it is only the half-brother who shall take the property only when reunited.'—Or the word '*samsṛṣṭaḥ*' itself may be taken as standing for the *uterine brother* (in which case it will not be necessary to construe the word '*sodaraḥ*' of the first line over again with the second line). That is why Jitendriya has quoted this text as from Bṛhadyājñavalkya and in the form '*Sodaro nānyamātṛjaḥ.*'—Further, the term '*samsṛṣṭī*' of the first line is to be construed with the second line also; the meaning being that it is not only the *reunited half-brother* who will take the property, but also the *uterine brother even though not reunited.* Thus the meaning comes to be that the property is to be shared between the *unreunited uterine brother* and the *reunited half-brother*. It is with a view to this that the author has used the phrase '*api—cha.*'— . . . . . Some people have taken this text as explaining what is already contained in the preceding text—'*Samsṛṣṭinastu samsṛṣṭī.*'—But this is most improper; as in that case what was intended to be said having been already stated in the present text, the preceding text would be entirely superfluous. In reality what the present text means is as follows: That half-brother who is reunited is not to receive the property of a half-brother, but the uterine brother, even though not reunited, is to receive the property of a uterine brother.—The explanation, whereby the meaning is obtained that 'the half-brother, even though reunited, shall not receive the property,' is not right; as in that case the second '*anyodarya*' in the first line would be superfluous; so also would the term '*nānyamātṛjaḥ*' in the second line.—In our opinion, the meaning is as follows: (*a*) 'The half-brother who is reunited is to take the property, even when there is a uterine brother, but not reunited; (*b*) the half-brother shall not take it, if he is not reunited,'—this is the meaning of the first half.—Next the question arising—'Then, is the uterine brother never to receive the property?'—the answer is given in the second line; (*c*) 'even though not reunited, the uterine brother (the term '*sodaraḥ*' being construed from the first line), shall receive the property, and the reunited half-brother *alone* shall not take the whole of it; it shall be shared between both (the

unreunited uterine brother and the reunited half-brother). This is exactly what has been declared by Manu in the text '*Sodaryā vibhajēyustam, etc.*'—(*Dāyabhāga*, pp. 193—208.)

What is asserted here is that in a case where there is a reunited half-brother and also a uterine brother, the property is to be shared by both.—The term '*asaṁsṛṣṭi*' is to be construed both ways; as also the term '*saṁsṛṣṭaḥ*,' which latter, in the first half stands for the *uterine brother*, and in the second half, for 'reunited'; after the word '*anyamātṛjaḥ*,' we have to supply the particle '*eva*.' The meaning thus comes to be as follows—(*a*) 'The half-brother shall take the property, if he is *reunited*; (*b*) the half-brother shall not take the property, if he is *not reunited*';—these affirmative and negative propositions show that what makes the half-brother take the property is the fact of his being *reunited*, not that of his being a *brother*;—similarly, (*c*) 'the uterine brother shall take the property, even when *not reunited*, what to say as to his taking it when *reunited*';—(*d*) 'even when reunited, the half-brother *alone* shall not take the property, he shall share it with the uterine brother, even when the latter is *not reunited*.'—Thus the upshot is as follows: In a case where there is *an unreunited uterine brother* and a *reunited half-brother*, the property of a sonless brother shall be divided equally between both of these; as each of them fulfills one of the two conditions entitling him to the property—the uterine brother fulfilling the condition of being *uterine* and the half-brother fulfilling the condition of being *reunited*. If the uterine brother also is *reunited*, then he alone shall take the entire property, as fulfilling both the conditions (of being *uterine* and *reunited*) and as such having a stronger claim than the half-brother (who fulfills the single condition of being *reunited*).—The masculine gender in the terms '*saṁsṛṣṭī*' and the rest is not meant to be significant; that is why Manu has declared the uterine sisters also to be entitled to receive the property,—in the text '*Vibhaktāḥ sahajīvantaḥ, etc.*'—(*Vīramitrodaya*, p. 678.)

The first line answers these questions—(*a*) In a case where the dead man has left an *unreunited* uterine brother and a *reunited* half-brother, who is to receive his property? (*b*) In a case where he has left a uterine brother and a half-brother, *both reunited*, who is to receive his property?—The answer is that the mere half-brother shall not receive the property; he shall receive it only if *reunited*; but the uterine brother shall receive it, even when *not reunited*.—Thus then, in a case where between the uterine brother and the half-brother, each fulfills only one of the two conditions of *being uterine* and being *reunited*, the property shall be divided between them; but not so when the half-brother is *not reunited*; this is what is meant by '*saṁsṛṣṭo nānyamātṛjaḥ*,' *i.e.*, when the *reunited* uterine brother is there, the half-brother shall not receive the property, even though *reunited*; which means that in that case the reunited uterine brother alone shall receive the property; because though both would be equally *reunited*, yet the claims of the uterine brother would be stronger, by virtue of his being *uterine* in addition to being *reunited*.—[The views of *Dāyabhāga* and *Mitākṣarā* are then stated]—The view of Shūlapāṇi Mahāmahopādhyāya as expressed in his *Dīpakalikā* commentary on Yājñavalkya is as follows: Even though *not reunited*, the uterine brother shall receive the property, not the half-brother even though

united.—If the reading is '*nānyodaryo dhanam harst,*' the meaning would be 'being a half-brother, one will not receive the property.' The purpose served by the text is to assert the claims of the *unreunited* uterine brother.—[Then it states the view of '*Ratnākara* and others.']—(*Smṛtitattva II*, pp. 194-195.)

What is asserted here is that in a case where there is an *unreunited* uterine brother and a *reunited* half-brother, the property is to be divided between them.—Here the terms '*anyodarya*' and '*anyamātṛja*' stand not for the *half-brother* only, but also for the *uncle* and others. If these latter were not meant, there would be no point in including them under the category of 'reunited coparceners.'—The term '*asamsṛṣṭyapi*' is to be construed both ways; and the term '*samsṛṣṭaḥ*' is to be repeated, once in the sense of 'reunited' and then in the sense of 'the uterine brother'; in the former case, the particle '*api*' is to be understood after '*samsṛṣṭaḥ*'; and at the end of the verse the particle '*eva*' is to be understood. Thus the following propositions are deduced from the text: (A) A non-uterine coparcener—*i.e.*, wife, father, grandfather, half-brother, uncle—shall take the property, if *reunited*,—not if he is *not reunited*; thus what entitles the non-uterine coparcener to receive the property is the fact of his being *reunited*.—(B) The uterine brother shall take the property, even though *not reunited*; what entitles the uterine brother to receive the property is the fact of his being uterine.—(C) The non-uterine coparcener *alone* shall not take the property, even though he be *reunited*; between the uterine brother and the non-uterine coparcener, the property is to be divided,—one being entitled by reason of his being *uterine* and the other by reason of his being *reunited*. This is exactly what is made clear by Manu in 9. 211-212:—'*Yeṣām jyeṣṭhaḥ*, *etc.*'—(*Vyavahāramayūkha*, pp. 148-149.)—In a case where there is a uterine brother *not reunited* and also other non-uterine coparceners as uncle, half-brother and the like who are united—the property has to be divided.—(*Ibid.*, p. 141.)

'*Ādadyāt*,'—shall take.—*Anyamātṛjaḥ*,' *i.e.*, other than the uterine brother.—(*Vibhāgasāra*, 18. 1—6.)

The question arises—(A) In a case where the *uterine* brother is not 'reunited,' and the *non-uterine* (half-brother) is 'reunited,' who is to inherit the property? (B) Also in a case where there is a *uterine* brother and a *non-uterine* brother,—both 'reunited,'—who is to inherit it?—These questions are answered in this text. (A) The meaning of the first half is as follows: When a *non-uterine* brother is to inherit the property only if he had been 'reunited' to the dead person;—according to the preceding section (361) the uterine brother would succeed even though not 'reunited';—so that taking the two texts together, it follows that in a case where there is a *uterine brother not 'reunited,'* and also a *non-uterine brother 'reunited,'* the property is to be divided between both of them; but if the *non-uterine* brother also is not 'reunited,' then he does not share the property. (B) The meaning of the second half of the text is that in a case where there is a 'reunited' uterine brother, the property will go to him,—not to the *non-uterine brother*, even though this latter also may have been 'reunited'; the whole property shall go to the 'reunited' *uterine brother*.—(*Dāyanirṇaya*, 7. 2-8 *et. seq.*)

The law on this subject may be thus summed up: First of all comes the *uterine* brother; if there is no uterine brother, then the *non-uterine* brothers come in; as between the 'reunited' and 'non-reunited' *uterine* brothers, the property goes to the former;—as between the 'reunited' *non-uterine* brother and the 'non-reunited' *non-uterine* brother, the property goes to the former;—as between the 'reunited' *non-uterine* brother and the 'non-reunited' *uterine* brother, the property is to be equally divided;—as between the 'reunited' *uterine* brother and the 'reunited' *non-uterine* brother, the property goes to the former.—(*Dāyanirṇaya*, 8. 1—8.)

362. गौतम 28. 27.] अथ संसृष्टिविभागः [*v.l.*, असंसृष्टिविभागः] प्रेतानां ज्येष्ठस्य ।

As regards partition among reunited coparceners [*v.l.*, among unreunited coparceners]—the share of those dead goes to the eldest.—(*Gautama*, 28. 27.) [Quoted by *Vishvarūpa*, p. 252.]

NOTES

The term '*eldest*' here stands for the *father*, who has been declared to be entitled to the property of such sons as have no other uterine brother and who have not been reunited to any other brother.—(*Vishvarūpa*, p. 252.)

The term 'eldest' is purely illustrative; what is meant is that the property goes to the brothers, not to the widow or to the parents.—(*Haradatta.*)

363. कात्यायन] संसृष्टानां तु संसृष्टाः पृथक्स्थानां पृथक्स्थिताः ।
अभावेऽर्थहरा ज्ञेया निर्बीजान्योऽन्यभागिनः ॥

(*a*) Among reunited coparceners, and (*b*) among those living separately,—on the death of one coparcener, his property shall be taken (*i*) by other coparceners, and (*ii*) by others living separately (respectively),—those receiving the property in each case being such as are entitled to inherit the property of any one among themselves who may die childless.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 605; *Vivādachintāmaṇi*, p. 250; *Vivādachandra*, 25. 1—10; *Vibhāgasāra*, 18. 2. 2.]

NOTES

The shares of deceased reunited coparceners go to the surviving reunited coparceners;—the shares of those living separately go to others living

separately ;—'*abhāve*,' *i.e.*, in the absence of the wife and other heirs.—'*Nirbījānyon-yabhāginaḥ*,'—this is a copulative compound.—(*Vivādaratnākara*, p. 605.)

It is declared here that among those mentioned, on the death of one (*ekasya abhāve*) the other takes his property ; to this a qualification is added that *the persons mentioned must be such as are entitled to receive the property of any one among themselves who may die childless.*—The upshot of the law on the subject is as follows : If a reunited coparcener dies, leaving either a son born after the previous partition, or a grandson or a great-grandson, these latter shall receive his property ;—if there is no son, etc., the property shall go to such a widow as may be fully equipped with all the qualities of chastity and the rest and entirely free from all the eight forms of sexual intercourse ; the other widows, if chaste, shall be entitled to maintenance, not to share in the property ;—as for the dead man's daughters, they shall be maintained and have all their rites ending with marriage performed with the property left by their father ;—the dead man's father shall be maintained ;—in the absence of all these, the entire property goes to the reunited coparcener of the dead man. If among the reunited coparceners there is a uterine brother and a non-uterine brother, the property goes to the uterine brother. If there is a non-uterine brother who has been reunited and a uterine brother who has not been reunited, then both of these share the property equally.—If, of these two, only one is there, then that one receives the property :—among reunited coparceners if any one has acquired property by means of learning and other means after the 'reunion,'—though such property is normally impartible yet it may be divided ; but the acquirer shall receive two shares, each of the other reunited coparceners receiving only one share each.—(*Vivādachintāmaṇi*), pp. 250-251.)

'*Nirbījānyonyabhāginaḥ*.'—They are related to each other in such a manner that if any one dies childless, the other will take his property.—The upshot of the whole is as follows :—If a reunited coparcener dies, his property goes to such of his sons, grandsons and great-grandsons as may have been born after the reunion ;—if there are no such sons, etc., it goes to his chaste wife ; the unchaste wives have to be supported ; his daughter also has to be maintained till she is married ; —in the absence of all these, the property goes to the reunited coparcener ; and among the reunited coparceners, if one is a uterine brother and another is not a uterine brother, then the property goes to the reunited uterine brother.—(*Vibhāgasāra*, 18. 2-3.)

364. नारद 13. 24.] (A) संसृष्टानां तु यो भागस्तेषामेव स इष्यते ।
(B) अतोऽन्यथांशभाजस्तु [*v.l.* (*a*) अनपत्यांश-
भागो हि (*b*) अतोऽन्यथानांशभाजः] ।
निर्बीजेष्वितरानियात् ।

(A) The property of reunited coparceners is held to belong to the reunited coparceners ; (B) in other cases (where there

are no reunited coparceners), it goes to those entitled to share it (*i.e.*, the heirs); (C) in the case of those leaving no offspring, it will go to others.—(*Nārada*, 13. 24.) [Quoted in *Vivādaratnākara*, p. 602; *Vivādachintāmaṇi*, p. 249; *Vivādachandra*, 25. 1–10; *Mitākṣarā*, pp. 739, 740; *Smṛtichandrikā*, pp. 703, 706; *Parāsharamādhava*, p. 356; *Vibhāgasāra*, 18. 1–7; *Dāyanirṇaya*, 22. 1–9.]

NOTES

'*Atonyathā*,'—in the event of there being no reunited coparceners;—'*Nirbījeṣu*,' among those who have no offspring.—'*Itarān*,'—to those not receiving any shares; the share should go, '*iyāt*.'—The *Pārijāta* has adopted the reading '*atonyathānamshabhājaḥ*; but we have rejected this reading because it is not in agreement with many treatises.—(*Vivādaratnākara*, pp. 602-603.]

'*Teṣāmeva*,'—of the reunited coparceners—'*atonyathā*,' if there are no reunited coparceners;—the single '*bhāga*,' 'property';—'*iyāt*' goes,—'*amshabhājaḥ*'; to the sons. '*Nirbījeṣu*, in the case of reunited coparceners dying without issue,—it goes—'*itarān*,' others, *i.e.*, those not 'reunited.'—The first sentence (A) does *not* mean that 'whatever was in the possession of each coparcener while they were reunited, should, on declaration, remain with him'; because in the presence of the principle that during 'reunion' they are all equal owners, such a declaration as the one suggested could serve only a transcendental purpose (*i.e.*, would be futile).—(*Vivādachintāmaṇi*, p. 249.)

'*Atonyathā*,'—*i.e.*, where there are *reunited* coparceners, *unreunited* coparceners in the shape of the half-brother and others shall not receive any shares [*v.l.*. '*nāmshabhājaḥ*' for '*amshabhājastu*].—In cases where all the reunited coparceners are childless, the property shall go 'to others,' *i.e.*, to such unreunited coparceners as the half-brother and others.—(*Smṛtichandrikā*, pp. 706-707.)

'*Nirbījeṣu*,'—without children.—'*Itarāniyāt*,' *i.e.*, it should go to persons other than those mentioned before.—The redivision among reunited coparceners is to be done by means of 'dice-throwing.'—(*Vibhāgasāra*, 18 1—7.)

'*Teṣāmeva*,'—of the *reunited* persons only;—'*atonyathā*,'—*i.e.*, in the absence of the *reunited* persons;—'*amshabhājāḥ*,' the son and others.

The meaning is that if the reunited member has no issue his share shall go to others.—(*Dāyanirṇaya*, 22. 2. 1.)

365. नारद 13. 25—27.] (A) भ्रातॄणामप्रजः प्रेयात् कश्चिच्चेत् प्रव्रजेत वा।
विभजेयुर्धनं तस्य शेषास्ते स्त्रीधनं विना॥
(B) भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयात्।
रक्षन्ति शय्यां भर्तुश्चेत्, आच्छिन्द्युरितरासु तत्।
(C) या तस्य दुहिता तस्याः पित्र्योंऽशो भरणे मतः।
आसंस्काराद् हरेद् भागं परतो बिभृयात्पतिः॥

(A) If among (reunited) brothers, any one should die, or become a wandering mendicant, the others shall divide his property, excepting the *Strīdhana.*—(B) They shall make provision for his wives till their death, in case they remain faithful to the bed of their husband ; should the wives be otherwise, they shall withdraw the provision.—(C) If he has left a daughter, her father's share would be meant for her maintenance ; till her marriage she shall retain that share ; after marriage, her husband shall maintain her.—(*Nārada*, 13. 25—27.) [Quoted in *Smṛtichandrikā*, pp. 107, 681 ; *Parāsharamādhava*, pp. 356, 362 ; *Vivādaratnākara*, p. 603 ; *Vivādachintāmaṇi*, p. 250 ; *Vivādachandra*, 25. 2—10 ; *Mitākṣarā*, pp. 740, 728 ; *Madanapārijāta*, p. 680 ; *Vīramitrodaya*, pp. 662, 687 ; *Vyavahāramayūkha*, pp. 139, 151 ; also by *Vishvarūpa*, p. 252 ; *Dāyabhāga*, p. 168 ; *Aparārka*, pp. 741, 743 ; *Smṛtitattva II*, p. 191 ; *Vibhāgasāra*, 18. 1—9 ; *Dāyanirṇaya*, 5. 1—4.]

NOTES

See III, 11, 49 and 89.

It is clear that this refers to the case of reunited property.—(*Smṛtichandrikā*, p. 681.)—(B) and (C) lay down what is to be done for the wives and daughters of the childless coparcener. The other reunited coparceners shall perform the daughter's marriage and till then maintain her. (*Ibid.*, 702.)

(A) This text lays down the right of the brothers taking the property of a dead brother, even in the presence of his widows. But this refers to the case of reunited brothers ; hence there is nothing in this that could be regarded as contrary to what has been declared by Yājñavalkya regarding the wife having a prior claim to the property of a childless husband.—(*Parāsharamādhava*, pp. 353-356.)

(B) '*Wives*' meant here are those who are chaste but are not keeping the vows of the widow ; according to the *Pārijāta* however the 'wives' meant here are those belonging to the same caste as the husband.—'*Otherwise*,'—*i.e.*, not faithful to the husband's bed.—'*Āsaṃskārāt*,' *i.e.*, she shall receive as much of the property as may be sufficient for all the rites ending with marriage,—says the *Kalpataru*.—(*Vivādaratnākara*, p. 603.)

'*Others*,'—*i.e.*, those reunited.—'*Itarāsu*,' those not faithful to the bed, and who misbehave.—'*Tat*,' *i.e.*, the *Strīdhana*. The meaning is that the misbehaving widows should not be maintained ; in fact their *Strīdhana* also should be taken away from them. '*Daughter*'—the unmarried daughter is meant here ; everything shall be done for her, beginning from maintenance and ending with marriage.—(*Vivādachintāmaṇi*, p. 250.)

On the death of a reunited coparcener such of his wives as are chaste shall receive maintenance.—'*Itarāsu*,' those who are unchaste.—'*Āchchhindyuḥ*,' do the cutting off.—'*Daughter*,'—unmarried ;—'*āsaṃskārāt*,' till

marriage,—they shall maintain her; after marriage, her husband shall maintain her.—(*Vivādachandra*, 25.2—10.)

'*Itarāsu*,'—those not faithful to the bed.—(*Madanapārijāta*, p. 680.)

'*Itarāsu*,'—those not faithful to the husband's bed, *i.e.*, those who misbehave.—'*Āsaṁskārāt*,'—*i.e.*, everything, including the marriage.—(*Vīramitrodaya*, p. 688.)—This text asserts that even when the widow is there, the property goes to the brothers of the deceased, the widow getting only maintenance.—(*Ibid.*, p. 632.)

This refers to reunited coparceners.—(*Vyavahāramayūkha*, p. 151.)—This refers to the widow of a man who has died 'undivided' or 'reunited.'—(*Ibid.*, p. 139.)

Here it is asserted that even when the wife is there, the property of the deceased goes to his brothers and the widow receives only maintenance.—(*Mitākṣarā*, p. 729.)

This refers to such women as may have been married, but not in strict accordance with the law on the subject.—(*Dāyabhāga*, p. 168.)

Among reunited brothers, if one becomes a renunciate or dies, then the other reunited brothers shall take his property; his wife, if chaste, shall be supported; those of his wives that are not chaste shall not be supported; his unmarried daughter shall be maintained till she is married.—(*Vibhāgasāra*, 18. 1—11.)

366. प्रजापति] अन्तर्धनं च यद्द्रव्यं संसृष्टानां च तद्भवेत् ।
भूमिं गृहं च [*v.l.*, चा] संसृष्टाः प्रगृह्णीयुर्यथांशतः ॥

Property capable of concealment and other (moveable) property should go to the reunited (half-brothers; but the unreunited (*uterine* brothers and sisters) shall take the land and the house, according to their share.—(*Prajāpati.*) [Quoted in *Smṛtichandrikā*, p. 706; *Parāsharamādhava*, p. 363; *Vīramitrodaya*, p. 682; *Vyavahāramayūkha*, p. 150.]

Notes

'Concealed wealth' and also such moveable property as quadrupeds and bipeds, shall go to the '*saṃsṛṣṭa*,' *reunited*, half-brothers according to the share of each; and the '*unreunited*' brothers and sisters shall take the land and the house, in accordance with their respective shares.—(*Smṛtichandrikā*, p. 706.)

Property capable of concealment and other property,—*i.e.*, moveable property—shall belong to the 'reunited' half-brothers, in accordance with their respective shares;—and lands, houses and other kinds of immoveable property shall belong to the 'unreunited' brothers, in accordance with their respective shares.—(*Parāsharamādhava*, p. 363.)

'*Dravyam*' stands for such moveable property as bipeds, quadrupeds, and the like.—'*Saṃsṛṣṭānām*,' 'reunited'—'half-brothers' (understood). This text refers to cases where there are both kinds of property, moveable and immoveable, while *Yājñavalkya's* text refers to cases where all the property is either moveable only or immoveable only.—(*Vīramitrodaya*, p. 682.)

'*Antardhanam*,' such property as can be concealed by being buried underground and such other means, *i.e.*, gold, silver and the like;—this the '*reunited*' half-brother shall take.—The land shall be taken by the uterine brothers.—Cows, houses and the like shall be taken by uterine brothers and half-brothers. But according to *Madana*, the half-brother shall take the cows and houses only if reunited. But this does not follow from the present text.—It has been asserted in the *Smṛtichandrikā* that in a case where the only property is either concealable wealth only, or lands only, or cows and other cattle only,—the unreunited coparcener that will take it must be the *uterine* brother.—But authority for this statement has to be found. Among uterine brothers, if some are reunited and others are not reunited, then the property shall be taken by only those that are reunited.—(*Vyavahāramayūkha*, p. 150.)

367. गौतम 28. 26.] संसृष्टिनि प्रेते संसृष्टो रिक्थभाक् ।

When a reunited coparcener dies, his reunited coparcener takes his property.—(*Gautama*, 28. 26.) [Quoted in *Vyavahāramayūkha*, p. 150.)

368. यम] अविभक्तं स्थावरं यत् सर्वेषामेव तद्भवेत् ।
विभक्तं स्थावरं प्राप्तं नान्योदर्यैः कदाचन ॥

The undivided immoveable property shall belong to all; the divided immoveable property shall never be taken by non-uterine coparceners.—(*Yama*.) [Quoted in *Smṛtitattva II*, p. 192; *Dāyanirṇaya*, 8. 1-2.]

NOTES

See III, 93.

'*To all*,'—*i.e.*, to the uterine as well as to the non-uterine. It follows from this that property other than immoveable, whether divided or undivided, shall belong to the uterine brothers only.—(*Smṛtitattva II*, p. 192.)

CHAPTER III

Section 1

SEVERAL HEIRS MENTIONED TOGETHER

1. मनु 9. 185.] पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वा ।

If a man dies sonless, his father or brothers shall take his property.—(*Manu*, 9. 185.) [Quoted in *Mitākṣarā*, pp. 729, 757, 758, 776 ; *Smṛtichandrikā*, pp. 672, 691 ; *Vivāda-chintāmaṇi*, p. 240 ; *Vivādaratnākara*, p. 592 ; *Parāshara-mādhava*, p. 356 ; *Dāyabhāga*, p. 190 ; *Vibhāgasāra*, 16. 1—9.]

NOTES

See III, 86 and 77.

The father shall take the property of that son who has not been divided from him ;—' *or brothers* '—with the father's consent.—If the dead son had been divided, then his property shall go to his widow, and in her absence, to his daughter and the rest mentioned by Yājñavalkya.—(*Sarvajñanārāyaṇa.*)

If the dead man has left none of the principal kinds of sons, nor a wife or daughter,—his property shall be taken by his father,—and by the dead man's brothers, only if their mother is not living.—(*Kullūka.*)

If there are no sons, the father shall take the property. The term ' father ' here stands for the wife (daughter, mother, father) and the rest.—(*Rāghavānanda.*)

The father shall take the property of his sonless son,—*i.e.*, of the son who has left none of the various kinds of sons sanctioned in the scriptures.—' or *brothers*,'—*i.e.*, uterine brothers.—(*Nandana.*)

The literal meaning of the words is quite clear ; not so clear is the real purport, which has been made clear by the *Saṅgrahakāra* in the following words : ' If a man possessed of some property dies without any kind of issue, then his property is to be taken by his father and others mentioned in the text of Manu.' It is implied however that the father shall take the property in the absence, not only of the several kinds of issue, but of the *wife* also.—(*Smṛtichandrikā*, pp. 672-673.)—' *Aputrasya* ' means ' one who has left no son or wife or daughter or daughter's son. '—(*Ibid.*, p. 691.)

This shows that the property of the sonless man goes to the father or to the brother.—(*Mitākṣarā*, p. 729.)—This text does not lay down the order of preference ; it only asserts the right of the father and the brother to inherit tho property in question.—(*Ibid.*, p. 758.)—In the absence of the father the property goes to the brothers.—(*Ibid.*, p. 775.)

' *Aputrasya*,'—one who has not left any kind of son, primary or secondary.—(*Vivādaratnākara*, p. 592.)

The words of Manu are not meant to lay down any order of preference.—(*Parāsharamādhava*, p. 356.)

2. याज्ञवल्क्य 2. 136-137.] पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा ।
तत्सुतो गोत्रजो बन्धुः शिष्यः सब्रह्मचारिणः ॥
एषामभावे पूर्वस्य धनभागुत्तरोत्तरः ।
स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिः ॥

If a man dies without a son, his property shall be taken by the following, the succeeding one taking it only in the absence of the preceding one ; such is the law for all castes :—wife, daughters, parents, brothers, their sons, *Sagotra*, *Bandhu*, disciple, fellow-students.—(*Yājñavalkya*, 2. 136-137.) [Quoted in *Vivādaratnākara*, p. 594 ; *Vivādachintāmaṇi*, p. 240 ; *Vivādachandra*, 24. 1—10 ; 25. 2. 2 ; *Madanapārijāta* p. 671 ; *Parāsharamādhava*, p. 352 ; *Dāyabhāga*, p. 151 *Vīramitrodaya*, pp. 623, 640 ; *Vyavahāramayūkha*, p. 187 *Dvaitaparishiṣṭa*, 42 ; *Smṛtitattva II*, pp. 162, 188-189 *Vibhāgasāra*, 16. 1—11 ; *Dāyanirṇaya*, 9. 1—9.]

NOTES

'*Wife*'—The wife meant here is one who has conceived ; as says Vashiṣṭha : '*Atha bhrātṛṇām dāyavibhāgaḥ, etc.*'—where it is clearly shown that those wives alone are entitled to inherit as are pregnant.—'*Duhitaraḥ*,' '*daughters*,'—*i.e.*, the 'appointed daughter.' In case there is expectation of a son being born, the 'daughter' shall be entitled only when no such son is born.—Throughout the text the particle '*eva*' has a restrictive force.—'*Parents*,'—mother and father ; though the rights of the two are joint, yet the fact that they have been mentioned in a copulative compound shows that each of them is entitled to inherit. But even though they have been mentioned in a copulative compound, yet the mother comes first ; this has been clearly stated in the text—'*Anapatyasya putrasya mātā dāyamavāpnuyāt*,—'the mother shall inherit the property of her childless son.'—" But we have also the text declaring '*Pitā haredaputrasya, etc.*'—'the father shall take the property of his sonless son."—This latter text is to be taken as applying to cases where the mother is not there.—As for Shaṅkha's text which declares that 'if a man dies childless, his property goes to his brothers, etc.'—this also should be taken as applying to cases where the above-mentioned wife and daughter are not there, in which case the property goes to the uterine brother . . . . '*Bhrātarastathā*,'—the particle '*tathā*' stands for the various kinds of brothers, so that the half-brother and all other kinds of 'brothers' become included.—'Their sons' ;—'*gotrajas*,'—*i.e.*, in the order of (1) *Sapiṇḍa*,

(2) *Samānodaka*, (3) those descended from one common ancestor, and (4) those descended from a common *Ṛṣi* (*Gotra*).—'*Bandhu*,' the maternal uncle and other cognates.—The '*Āchārya*' also has to be included by reason of his having been eulogised as 'father.'—'*Disciple*,' the boy whom one has initiated.—'*Fellow-students*,' those who have been initiated by the same *Āchārya*. —Among all these the succeeding ones are entitled to inherit the property only in the absence of the preceding ones.—(*Vishvarūpa*.)

'*Aputrasya*,' who has no son, primary or secondary, living.—'*Svaryātasya*,' dead.—'*Dhanabhāg*,' entitled to receive the property. —Among the wife and the rest mentioned in a definite order, each succeeding one is entitled to receive the property only in the absence of the preceding ones.—This law applies to all men . . . . . . Some people have taken the term '*daughters*' as standing for the appointed daughter. But this cannot be right; as a man who has an appointed daughter cannot be called 'sonless,' the appointed daughter having been declared by Vashiṣṭha to be the third kind of 'son.'—'*Pitarau*,' mother and father; these inherit the property if the dead son has left no wife or daughters.—In the absence of the parents, '*brothers*';—*i.e.*, *uterine* brothers, these being the nearmost.—In the absence of 'brothers,' the brother's sons;—in the absence of these latter, '*Sagotras*'; among these latter, the nearmost comes first.—In the absence of *Sagotras*, the '*Bandhu*,'—*i.e.*, the father's sister, the mother's sister, the son of the maternal uncle and so forth.—In the absence of the '*Bandhu*,' the '*Disciple*,'—one who has been initiated and taught the Veda.—In his absence, the '*Fellow-student*,' one having the same *Āchārya*.—On this text, some people have expressed the following opinion: "A woman is entitled to perform acts of piety such as charity and the like only along with her husband, as for pleasure, she is not to indulge in it when a widow; and pleasure and piety are the only two purposes served by wealth; so that so long as the father and other relatives are there to use the wealth for those purposes, the widow cannot receive the property; she is to receive just enough to maintain herself, nothing more; and this is all that is meant when the wife is spoken of as entitled to inherit property. Similarly when the daughter is spoken of as inheriting property, it refers to cases where the property left by the dead man is enough for the daughter's marriage. So that if the property left is more than what would be required for the wife's maintenance and the daughter's marriage, then, even though the wife and daughter be there, the father and other *Sapiṇḍas* would be entitled to inherit it."—But this is not right; on the death of the owner of the property, the ownership of the wife and the daughter is already there, it has not got to be brought into existence. The ownership of the wife over the husband's property is brought about by the marriage-rites themselves; the ownership of the daughter over the father's property is born with herself. Thus then so long as the wife and the daughter are there, the present text cannot set aside their rights of ownership and create those of the father and other *Sapiṇḍas*. If the wife and the daughter are not there, the rights of the father and others would be brought about without the setting aside of any other rights. Therefore what is meant by the present text is that the father and the rest are entitled to inherit only in the absence of the wife and the daughter. Nor are women precluded from such pious acts as

charity and the like which do not require the use of Vedic Mantras or of consecrated fires.—(*Aparārka.*)

Here we have the order of precedence among the several classes of 'heirs,' on the failure of sons.—One who has not got any of the twelve kinds of 'sons' is called '*sonless*'; when such a person has gone to heaven, *i.e.*, to a region other than the earth,—the person entitled to inherit his property is each succeeding one in the absence of the preceding ones among those mentioned in the list consisting of the 'wife' and the rest.—'*This is the law for all castes,*' *i.e.*—(*a*) those born in the natural order of mixed castes, such as the *Mūrdhāvasikta* and the rest, (*b*) those born in the inverse order of mixed castes, such as the *Sūta* and the rest, and (*c*) those belonging to the primary castes, Brāhmaṇa and the rest.

First of all, *wife* is the person entitled to inherit the property. The 'wife' meant here is the 'duly married wife'; the derivation of the term '*patnī*' connoting *association at sacrificial performances.* The singular number in '*patnī*' is in reference to the caste; so that if a man has left several widows, some belong to the same caste as himself and others to other castes, they divide the property among themselves in accordance with the shares prescribed for each. (*a*) *Vṛddha-Manu* also declares the wife's title to the entire property—'The sonless widow guarding her husband's bed and remaining firm in her vow shall herself offer the funeral cake and take the entire property.' (*b*) So also *Bṛhad-Viṣṇu*—'The property of the sonless man goes to the wife, in her absence, to the daughter, in her absence to the father, in his absence to the mother.' (*c*) So also *Kātyāyana*—'*Patni bharturdhanaharī, etc.*'—Again, '*Aputrasyātha kulajā, etc.*'—(*d*) So also *Bṛhaspati*—'*Kulyēṣu vidyamānēṣu, etc.*' As against these texts we have the following texts: (*a*) '*Bhrātṛṇāmaprajāḥ prēyāt, etc.,*' where Nārada has declared that even when the wives are there, the property goes to the brothers and the wives get only maintenance. (*b*) Manu (9. 185), on the other hand, has declared that 'the property of a sonless person goes to his father or brother'; and (*c*) again (in 9. 217), it is declared that 'the mother shall inherit the property of her childless son; and on the death of the mother, the father's mother';—(*d*) Shaṅkha also in the text '*Svaryātasya hyaputrasya, etc.*' has declared the inheritance to go in the following order—'the brothers, the parents and the seniormost wife';—(*e*) so also *Kātyāyana* in the text '*Vibhaktē samsthitē dravyam, etc.*'

Out of all these conflicting texts, *Dhāreshvara* has deduced the conclusion that the rule that 'the wife shall inherit the property' refers to the wife of a divided brother, who is desirous of being 'appointed' for bearing a child to her dead husband.—*Question*: "What is there to indicate that the widow is entitled to inherit only when so desirous, and by herself?"—The *answer* to this is that in view of the texts declaring that 'the father shall inherit the property of his sonless son,' it is necessary to qualify the rule laying down the title of the wife, and we cannot find any other qualification save the desire for 'appointment' to bear a child; also because of Gautama's text '*Piṇḍagotrarṣisambandhā rikthaṁ bhajeran, strī vanapatyasya bījam va lipseta,*' which means that 'the persons related through the *Piṇḍa* and the *Gotra* shall inherit the property of the childless person, or his widow shall inherit his property *if she*

desires a child.'—Manu (9. 146) also has declared—'*Dhanam yo vibhṛyāt bhrātuḥ, etc.*' which shows that even when the divided brother dies, his widow has a right over his property only through her child, not otherwise.—In cases of undivided brothers also, says Manu (9. 120)—'*Kanīyān jyeṣṭhabhāryāyām, etc.*' ; Vashiṣṭha also forbids 'appointment' sought for only with a view to inheriting the property ; which also shows that it is only through 'appointment' that the wife is entitled to inherit the property, not otherwise.—In cases where there is no 'appointment,' the widow is entitled to maintenance only ; as declared by Nārada (13. 26)—'*Bharaṇañchāsya kūrvīran strīṇām, etc.*' Yājñavalkya himself is going to declare (2. 142)—'*Aputrā yoṣitashchaiṣām, etc.*'—Further, the sole purpose served by the property of twice-born persons is the performance of sacrifices, and women are not entitled to such performance ; consequently it is not right that they should inherit property (on their own account). This has been thus declared by some one—'Wealth was produced for sacrificial performance ; those therefore that are not entitled to such performance are not entitled to inherit property ; they shall receive only food and clothing. Wealth was produced for sacrificial performance, therefore it should be employed in connection with religious acts, and should never be made over to women, to illiterate persons, or to heretics.'

The above view of Dhāreshvara is not right. In the text itself there is nothing to indicate any reference to 'appointment' (*Niyoga*) ; nor does the context bear any relation to it. Further, the following question has to be answered—Is it the 'appointment,' or the child born of the 'appointment' that entitles the widow to inheritance ?—If mere 'appointment' were to entitle her, then she would be entitled to the inheritance even though she may not bear any children ; and the son that may be born would not be entitled to the inheritance at all. If, on the other hand, the son that is born were to entitle the widow to the inheritance, then, in that case, the son himself would inherit the property as 'son,' and there would be no point in mentioning the 'wife' (as an 'heir' to her sonless husband).—Some people may hold the view that "the connection of women with property can be only through the husband or through the son, not in any other way."—But this would not be right ; as it would be contrary to such texts as '*Adhyagnyadhyāvāhanikam, etc.*' (Manu, 9. 194) [where the six kinds of *Strīdhana* have been set forth.]—Further, the present text has been set forth to meet cases where *all kinds* of 'son' are non-existent ; and when it is asserted that it is only the 'appointed' widow that inherits the property, it only means that the 'soil-born' (*Kṣetraja*) son of the dead man receives the property ; and this title of the 'soil-born' son having been already declared in a previous text, there would be no point in mentioning the 'wife' in the present text.—Gautama's text—'*Atha piṇḍa-gotrarṣi, etc.*,'—has been cited to prove that it is only the 'appointed' widow that is entitled to inherit property.—This also is not right. What is meant by this text of Gautama's is, not that 'the widow is to receive the property of the childless husband *if she be desirous of obtaining children*,' but that 'the property of the childless man shall be taken by *Sapiṇḍas* and *Sagotras* or by his wife ; and that the wife may either seek to obtain a child or may remain self-controlled and chaste ; so that the begetting of a child is only an alternative course of conduct provided for her. The particle '*vā*,' moreover, cannot mean

'if' (as it is taken under the other view).—Further, it is right that only the self-controlled (chaste) widow should inherit the property, not the one who has been 'appointed' and is censured among the people; specially as the practice of *Niyoga*, 'appointment,' has been censured by Manu in the text '*Nānyasmin vidhavā nārī, etc.*' (9. 64). From Nārada's text also—13. 24 and 26—it is clear that childless wives of 'reunited' coparceners are entitled to maintenance only. Further, even though the text—'*Bhrātṛṇāmaprajāḥ, etc.*', refers to the case of 'reunited coparceners,' yet it is not a mere repetition of what has been asserted in the text '*Samsṛṣṭinām tu bhāgaḥ, etc.*'; because what is asserted is that '*Strīdhana*' is impartible and the wives of reunited coparceners are entitled to maintenance only.—As for the text '*Aputrā yoṣitashchaiṣām, etc.*,' it refers to the widow of the impotent and such other men.—It has been argued that 'the wealth of twice-born men being meant for the performance of sacrificial acts, and women not being entitled to perform such acts, it would be improper for them to inherit property.'—This is not right; for if all property were meant for the purpose of the performance of *sacrifices*, then there would be no possibility of the performance of acts of charity, pouring of libations into fire and so forth.—In answer to this it might be argued that 'the term *sacrifice* stands for all *religious acts*, so that charities and libations being religious acts, there would be nothing wrong in the use of wealth for the purposes of these latter.'—But even so there would be no possibility of such acts of acquiring wealth and enjoying pleasures as can be accomplished by means of wealth; and this would militate against such texts of Manu (2. 96), Yājñavalkya (1. 115) and Gautama as lay down the necessity of the performance of religious acts, acquiring of wealth and enjoying pleasures.—Then again, the term '*dharma*' in this connection stands for *religious acts* in general (not for sacrificial performance only), and women also are entitled to perform such religious acts as those of public benefaction and the like; so that for the purpose of performing of such acts, it would be only right that women should possess property.—As regards the declaration that the woman should never be independent,—she may not be independent; but why should that be inconsistent with her inheritance of property?—The texts of Kātyāyana and Nārada which declare that mere livelihood should be provided for 'women,' clearly refer to 'kept women'; as all these texts use the term '*yoṣit*,' 'woman,' not '*patnī*,' 'wife.' In the present text however we have the word '*patnī*' which stands for the married wife, so that there would be no inconsistency or impropriety in a chaste and legally married wife inheriting property. Thus the meaning of the text comes to be that *when a divided coparcener, who has not been reunited, dies without a son his property should first of all go to his wife.*

This also disposes of the view of *Shrīkara* and others who have held that the rule regarding the wife inheriting property must refer to cases where the property concerned is small.—Because in *Yājñavalkya* (2. 115 and 123) the wife has been declared to be entitled to a share equal to that of the sons,—even in the presence of 'legitimate' sons,—both when the partition is done during the lifetime, or after the death, of the father.—Under the circumstances, it must be sheer illusion to hold that the widow of the man dying sonless should not receive anything more than mere maintenance. Nor can the two

texts of Yājñavalkya just referred to be taken as using the term '*share*' in the sense of *what is enough for maintenance* ; as in that case the terms '*share*' ('*amsha*') and '*equal*' ('*sama*') would be absolutely superfluous.

Another view that might be held is that—"if the property is a large one, the widow receives what should suffice for her maintenance, and if the property is small, she shall receive a share equal to that of the son."—This is not right ; as such an explanation involves a diversity in the rule,—the same injunction (contained in the said two texts) being taken to mean in one case that the widow receives just enough for her subsistence, and in the other that she receives a share equal to that of the sons. * * * *

Another view that has been held is as follows :—"(*a*) Manu (9. 185) has declared that 'the father is to take the property of his sonless son' ;—(*b*) Shañkha has declared that 'the property of a childless person shall go to the brother, then to the parents, then to his seniormost wife' ;—(*c*) Nārada (13. 25) has declared that the widows have to be maintained till death. From all this it follows that the widow is to receive just enough to maintain her. Such being the law, if a sonless man dies leaving a large property, the widow shall receive just enough to maintain her and the rest of the property shall go to his brothers ; in case however the property left is just enough to maintain the widow—or even less than that,—then the question arises as to whether that property shall go to the widow alone or to the brothers also ; and it is the answer to this question that is provided by the present text, whereby the widow is declared to have the prior claim ; then the daughter and so forth in the descending order.

This explanation also our teacher [Vishvarūpa—says the *Bālambhaṭṭī*] does not accept. Manu's text (9. 185), speaking of the 'father or the brothers' taking the property of the sonless man, only lays down an alternative option ; it does not lay down an order of sequence (whereby the brothers would receive it only in the absence of the father) ; in fact it has to be taken simply as laying down the fact that the father and the brothers are entitled to inherit the property, and such an assertion of mere title would be taken as referring to cases where the 'wife, daughter' and others are not there.—As for Shañkha's text, it applies to the case of reunited brothers.—Further, there is nothing either in the text or in the context to indicate that it refers to cases where the property is small (just enough to maintain the widow) ; and it would involve a duplicity in the rule if in reference to the 'wife and daughter' it were taken as referring to cases where the property is a small one, and in reference to the father and the rest, as referring to every kind of property.

Lastly, Hārīta has declared—'*Vidhavā yauvanasthā chennārī, etc.*' 'if the widow is a virago, she shall be given just enough to keep her alive.'—But this refers to cases where the widow is suspected of infidelity, who is not to receive the entire property ; and it is from this very text that we get at the implication that if the widow is not suspected of infidelity, she is to receive the entire property. It is with this same view that Shañkha has concluded his text with the assertion—'or the seniormost wife' ;—all which means that if the widow is possessed of excellent qualities and is not open to any suspicion of infidelity she is to take the whole property and like a mother, support the other widow who may be a virago.

Thus the established law is that '*if a man, who has been divided and has not become reunited, dies his entire property is to be taken by his chaste wife.*'

(II) In the absence of the wife, '*daughters.*'—We have the plural number here for the purpose of indicating that daughters belonging to the same caste shall receive equal shares and those belonging to different castes unequal shares. Says Kātyāyana—'*Patnī bharturdhanaharī, etc.*'—Also Bṛhaspati—'*Bharturdhanaharī patnī, etc.*'—Among the daughters if there is one married and another unmarried, then it is the unmarried daughter that shall receive the property, in accordance with the special text—'In her absence, the daughter, *if she is unmarried.*'—If one daughter is *settled* (having property of her own) and another is unsettled (with no property of her own), then the latter shall receive the property; because the declaration of Gautama, to the effect that 'the *Strīdhana* goes to those daughters who are unmarried and unsettled,' applies to the *father's* property also.—It will not be right to take the present text as referring to the 'appointed' daughter; because the 'appointed' daughter has been declared to be 'equal to the legitimate son.'

(III) The particle '*cha*' is meant to indicate that in the absence of daughters, the daughter's son shall inherit the property; as declared by Viṣṇu—'*Aputrapautrasantāne, etc.*'; and also Manu (9. 136)—'*Akṛta vākṛtā,*' *etc.*

(IV) *In the absence of daughters and daughters' sons*, the parents shall inherit the property. It is implied that as between the parents, the mother comes first as the one entitled to inherit, then the father. Because the term used in the text is '*pitarau,*' which is treated as a compound word expounded as '*mātā cha pitā cha,*' where the *mother* comes first; and the other form of the same compound is '*mātā pitarau,*' where also the *mother* comes first. Further, the father is common among several sons, while the mother is not so common, and as such she is the more nearly related to her son; so that hers shall be the prior claim, in accordance with the general principle enunciated by Manu (9. 187)—'*Anantaraḥ sapiṇḍād yaḥ, etc.*'; from which it follows that the proximity of relationship is the determining factor in the claim to inheritance.—In the absence of the mother, the father would inherit the property.

(V) *In the absence of the father, the brothers get the property.* Says Manu (9. 185)—'*Pitā haredaputrasya, etc.*'—*Dhāreshvara* has expressed the following opinion: "In accordance with Manu (9. 217), even while the father is there, if the mother is dead, the property shall go to the father's mother, not to the father; because the property taken by the father would go to his sons of other castes also; while that taken by the father's mother goes to only such persons as belong to the same caste."—This view is not accepted by our revered teacher [Vishvarūpa,—says the *Bālambhaṭṭī*]. Because even sons of different castes have been declared to be inheritors of property, in the texts (of Manu and others) that speak of the share of the sons of the four castes being in the proportion of 4, 3, 2, 1.—Among brothers, the property would go first to the uterine brothers; because half-brothers would be removed by one degree through the intervention of their mother.—

It is only when there are no uterine brothers that the half-brothers get the property.

(VI) *In the absence of brothers, brothers' sons* get the property in the order of their fathers. Where there are brothers as well as brothers' sons, the brothers' sons have no right to the inheritance; because the brothers' sons have been declared to be entitled to inherit only when no brother is there. But in a case where one of the several brothers has died sonless, all his surviving brothers become equally entitled to the property; if, prior to the division of that brother's property, another of the brothers dies, then the sons of this latter will have derived their title over the said property through their father; so that when the property comes to be divided, these sons shall receive the share which their father would have received.

(VII) *In th absence of brothers' sons, the Sagotras* shall receive the property; these being (1) the father's mother, (2) *the Sapiṇḍas* and the *Samānodakas*. Of these the first to receive the property would be the father's mother; this would be in accordance with Manu (9. 217.)—In the absence of the father's mother, the *Sagotra-Sapiṇḍas*—the father's father and others—shall receive the property;—the *Sapiṇḍas* belonging to other *gotras* being treated as '*Bandhus*'—If there is no descendant of the dead man's father, the property shall go to the following persons in this order—(1) father's mother, (2) father's father, (3) father's brothers, (4) father's brothers' sons.—If there is no descendant of the father's father, then the inheritance shall go to the *Sagotra-Sapiṇḍas* in the following order—(1) the father's father's mother, (2) the father's father's father, (3) the sons of (2), (4) the sons of (3), and so on, down to the seventh degree.—In the absence of *Sagotra-Sapiṇḍas*, the property goes to the *Samānodakas*; these are persons up to the seventh degree beyond the *Sapiṇḍas*, or up to that degree where their parentage and name may be known; as says *Bṛhat-Manu*—'The *Sapiṇḍa* relationship ceases in the seventh degree, the *Samānodaka* relationship would cease in the fourteenth; according to some the latter ceases only when the parentage and the name cease to be known; beyond that is the *Sagotra*.'

(VIII) *In the absence of Sagotras, Bandhus* (cognates) take the property. The *Bandhus, Cognates*, are of three kinds—(1) *one's own Bandhu*, (2) one's paternal *Bandhu*, and (3) one's maternal *Bandhu*. These have been thus named—'The sons of one's father's sister, the sons of one's mother's sister, the sons of one's maternal uncle,—these are to be regarded as *one's own Bandhus*; (2) the sons of the father's father's sister, the sons of the father's mother's sister, the sons of the father's maternal uncle,—these are to be regarded as one's *paternal Bandhus*; (3) the sons of the mother's father's sister, the sons of the mother's mother's sister, the son of the mother's maternal uncle—these are to be known as one's *maternal Bandhus*.'—Among these, by reason of proximity of relationship, *one's own Bandhus* shall be the first to receive the property; in their absence, the *paternal Bandhus*; and in the absence of these latter, the *maternal Bandhus*.

(IX) *In the absence of Cognates, the Teacher* shall receive the property, and the *Disciple* only in the absence of the Teacher; as declared by Āpastamba—'If a man has no son, his property goes to his nearest *Sapiṇḍas*; in their absence, the Teacher, in the Teacher's absence, the Disciple.'

(X) *In the absence of disciples one's fellow-student* takes the property. The 'fellow-student' being the man along with whom one has been initiated and carried on Vedic study and learnt its meaning.

(XI) *In the absence of the disciple,* the Brāhmaṇa's property may be taken by any Vedic scholar, according to Gautama, who says that 'Vedic scholars shall receive the property of the childless Brāhmaṇa.'—In the absence of Vedic scholars, any Brāhmaṇa may take the property; as says Manu (9. 188)—'*Sarveṣāmapyabhāve, etc.*'—Under no circumstances shall the king take the Brāhmaṇa's property; says Manu (9. 189)—'*Ahāryam brāhmaṇa-dravyam, etc.*'; Narada also—'*Brāhmaṇārthasya tannāshe, etc.*'

As regards the Kṣattriya and other castes (dying sonless),—if there is no one from among the list beginning with the 'wife' and ending with the 'fellow-student,' the property shall go to the king, not to a Brāhmaṇa; as declared by Manu (9. 189)—'*Itareṣām tu varṇānām etc.*'—(*Mitākṣarā.*)

[On the above, the *Bālambhaṭṭī* has the following notes: The particle '*eva,*' 'alone,' is to be understood after every one of the relatives mentioned; so that, so long as the preceding one is there, the succeeding one becomes excluded . . . The '*brothers*' include the *sisters* also.—The term '*tathā*' qualifying the 'brothers' is meant to include those also that have been divided and have not reunited.—'*Tatsutaḥ,*' is to be expounded as '*tayoḥ sutaḥ,*' 'the sons of both of these'; which means 'the sons and daughters of brothers and sisters.'—The term '*son*' here includes the 'grandson' and the 'great-grandson' also.—If the wife of the same caste is not there, a wife of a different may inherit; it is only the Shūdra woman that becomes excluded, as even though married, she is not entitled to the title of '*patnī,*' ('consort').

(II) The following opinion has been held: "In the absence of the *wife,* the property shall go to the *daughter-in-law,* not to the *daughter*; because being the 'half-body' of the son, her claims are superior; also because she is also the *Sagotra-Sapiṇḍa* of the dead man, which the daughter is not."—This however is wrong. On the grounds urged, the claims of the daughter-in-law would be superior to even those of the wife (see below where the daughter-in-law is placed after the grandmother).

(III) That the particle '*cha*' is meant to include the *daughter's son* has been added with a view to make clear an implication without which the original text would remain defective. This also rejects the views (*a*) that the daughter's son is implied by the plural number in the word '*daughters,*' and (*b*) that the daughter's son should be placed at the end of the list.—Even though Vijñāneshvara has mentioned the 'daughter's *son*' only, yet the 'daughter's *daughter*' also should be taken as 'coming as an heir in the absence of, and after, the daughter's *son.*'

(IV) In reality, the order of precedence between the '*parents*' should be, *first* the father, then the mother; as in the entire law of inheritance, the father is mentioned before the mother; for instance, wherever the *aunts* (father's sister and mother's sister) are spoken of, it is the father's sister that is mentioned before the *mother's* sister.—It has to be noted that after the *mother,* comes the *step-mother*; as she also is included in the denotation of the term 'mother.'

(V) The term '*brothers*' stands for the '*brother* and the *sister*,' the latter coming in after the former.

(VI) Similarly the term '*brother's sons*' includes *the sons and daughters of the brother* and also *the sons and daughters of the sister.*—'*In the order of their fathers,*'—*i.e.*, according as their father is the uterine or non-uterine brother or sister of the deceased.

(VII) The '*daughter-in-law*' is to come after the 'father's mother.'

(VIII) '*Sons of the father's sister,*' *etc.*—In all these the term 'sons' includes the *daughters* also.

(IX) If there are several Disciples of the same caste as the teacher, the property is to be divided among them.

(X) Any '*Brāhmaṇa*'—what is meant is *a Brāhmaṇa only*.]

These texts describe the persons who are to inherit the property where there is none of the twelve kinds of sons.—'*Aputrasya,*'—a man who has left none of the twelve kinds of sons; nor a son's son or a son's grandson;—'*Svaryātasya,*' dead;—from among the wife and the others mentioned, each succeeding one is to inherit the property of the preceding.—This law of inheritance is applicable equally to all castes.

(I) The wife is the first to inherit the property; the 'wife' meant here is one who has been duly married. Kātyāyana has laid down a special condition that the wife should be *chaste*; if the widow is not chaste, then the property goes to the daughter.

(II) In the absence of the wife, the property should go to those *daughters* who belong to the same caste as the father and who are unmarried at the time.—Some people take this as standing for the *Appointed Daughter*. But this is not right; as the Appointed Daughter, having been declared to be the third kind of son and 'equal to the legitimate son,' inherits the property even when the wife is there. In reality the term 'daughter' here stands only for that girl who has not been 'appointed' in the formal manner, and yet in regard to whom there is a suspicion of having been 'appointed' by the deceased in his own mind.

(III) '*Pitarau,*' mother and father. The property goes first to the father and then to the mother; such being the order of sequence sanctioned by the texts of Kātyāyana and Viṣṇu. The opinion of the *Mitākṣarā* on this point therefore is open to question.—In the absence of the mother, the uterine brothers; then the brother's sons; then the *Sagotra*, the *Sapiṇḍa*, the *Sakulya*, and so forth, in the order of the proximity of their relationship to the deceased.—In the absence of all these, the *Bandhu*, defined as—'The sons of one's father's sister, the sons of one's mother's sister, the sons of one's maternal uncle are to be known as *one's own Bāndhavas*.'—In the absence of the *Bandhu*, the '*Disciple*.' In the absence of the Disciple, the *fellow-student*,—*i.e.*, one who has been initiated to read the Veda along with the deceased.—The particle '*cha*' indicates the title of the step-brother in the absence of the uterine brother; the term '*tathā*' indicates the title of the *father's Bandhus* in the absence of *one's own Bandhus*, and that of the *mother's Bandhus* in the absence of the *father's Bandhus* and that of the *Teacher* in the absence of the *mother's Bandhus*.—In the absence of all these, the property of a Brāhmaṇa goes to such Brāhmaṇas as are learned in the Veda,

etc., etc.,—but that of other castes goes to the King,—says Nārada. —(*Vīramitrodaya-Ṭīkā* on Yājñavalkya.)

The meaning is that among these—wife, daughter, mother, father, brother, brother's son, *Sagotrā*, *Bandhu*, Disciple and fellow-student,—each succeeding one inherits the property in the absence of the preceding. The 'wife' meant here is one who is endowed with excellent qualities.—'*Sonless*' includes the absence of the grandson and great-grandson also,—as has been shown by the author of the *Prakāsha*; and this is quite right; such being the usage.—Though the use of the collective term '*parents*' would indicate the joint title of the father and mother, yet, in view of the text that 'the property of one who has left no son or wife goes to the mother,' it is the mother who has the prior claim; and the father comes in only if the mother is not there.—(*Vivādaratnākara*, pp. 594-595.)

Between the '*parents*,' the order of priority shall be that the mother, comes first, and in her absence, the father.—'*Tatsutaḥ*' the son of the brother.—'*Without a son*,' *i.e.*, leaving no son or grandson or great-grandson.—(*Vivādachintāmaṇi*, p. 241.)

If a man dies and does not leave any of the primary or secondary sons his property goes to his widow (*Vivādachandra*, 24. 1—10).—In the absence of the wife and the rest down to the *mother*, the property goes to the uterine brother.—(*Ibid.*, 25. 1-2.)

Here we have the order of inheritance in the case of the property of a man dying without a son or a grandson.—'*Wife*,' duly married; the singular number is in regard to the caste; so that if there are wives of the same caste as also of different castes, they shall receive the property in the proportion of 4, 3, 2, 1.—In the absence of the wife, '*daughters*.'—In the absence of daughters, daughter's sons.—In the absence of daughter's son, the parents—first the mother, then the father. In the absence of the father, brothers,—among them, the uterine brothers come first.—In the absence of both kinds of brothers—uterine and step-brother,—the sons of these; first the sons of the uterine brother, then the sons of the step-brother. In a case where one of the brothers has died (leaving no son or wife or daughter or parents)—his property has been inherited by his surviving brothers,—while all this property is held jointly by all these brothers, another of these dies, but leaving sons,—in these cases the share of the deceased shall go to his sons.—In the absence of the brother's sons, the property goes to the *Sagotras*;—among whom are included the father's mother, the father's father, the sons of the father's father, the sons of these sons,—and in the absence of these, the father's father's mother and others in that line;—and in the absence of these latter, the *Samānodakas*. The order of sequence among these *Sagotras* is as follows: (1) father's mother; (2) in her absence, the father's father, (3) in the absence of the father's father, father's brothers,—among whom the sons of the grandmother herself come first, then the sons of her co-wives;—(4) in the absence of the uncles, the uncle's sons;—(5) in their absence, the father's father's mother;—(6) in her absence, the father's father's father; (7) in his absence, his sons;—(8) in their absence, their sons,—and so on till the seventh degree of ascent. Beyond the seventh degree, the *Sāpiṇḍa*-relationship having ceased—after that come the *Samānodakas*; and as before, the priority shall be

determined by the nearness of relationship to the deceased.—'*Bandhus*' are of three kinds—(1) one's own, (2) the father's, (3) the mother's.—(*Madanapārijāta*, pp. 672—674.)

'*Without a son,*'—one who has left no son of any of the twelve kinds, 'Legitimate' and the rest.—This rule is applicable to '*all castes*'—to the main castes, Brāhmaṇa and the rest as also to the naturally mixed castes, the *Mūrdhāvasikta* and the rest.—The 'wife' meant is one duly married.—The order of inheritance is as follows—(1) the wife, (2) in the wife's absence, the daughter, (3) in the daughter's absence, the daughter's son, (4) in his absence, the mother, (5) in her absence the father, (6) in the father's absence, the brother, (7) in his absence, the brother's son, (8) in his absence, the father's mother, (9) in her absence, the father's father,—(10) then his sons, (11) then the sons of those sons, (12) in the absence of all lineal descendants of the father's father, the property shall go to the father's father's father, (13) to his sons, and (14) to the sons of those sons; and so on to the seventh degree of ascent; (15) after which, on the extinction of all *Sapiṇḍas*, it goes to the *Samānodakas*, who extend to the seventh degree beyond the *Sapiṇḍas*, or to that stage up to which the parentage and name continue to be known.—(*Parāsharamādhava*, p. 353.)

Prior to every one else comes the claim of the *wife*.—(*Dāyabhāga*, p. 151.)—The wife's right is established by the mere absence of sons, grandsons and great-grandsons (pp. 160-163).—Among the wives, first comes the wife belonging to the same caste as the husband, then the one belonging to the next lower caste (*Ibid.* p. 167).

If a man dies without any of the twelve kinds of sons, his property is to be taken by those mentioned here,—each succeeding one taking it only in the absence of the preceding.—This rule applies to all the castes—the primary caste, the castes mixed in the natural order and the castes mixed in the reverse order. The 'wife' is the *duly* married one; so long as such a wife is there, the wife obtained by the *Āsura* and other forms of marriage cannot inherit the property.—(*Vīramitrodaya*, p. 623.)—This text refers to cases where the deceased has been a divided member of the family who had not been reunited;—such is the opinion of Vijñāneshvara, Lakṣmīdhara, author of *Smṛtichandrikā*, Vishvarūpa, Medhātithi, Madanaratna and many others.—Where the text speaks of the man dying *without sons*, the term 'son' includes the son's son and the son's son's son also; because it is only in the absence of all these three, that the wife should be entitled to receive the property.—(*Ibid.*, pp. 640-641.)

If a man, who has been divided and not reunited, dies, his property shall be inherited in the order here laid down.—That 'wife' alone shall inherit the property who is devoted to her husband, not one who is unchaste.—(*Vyavahāramayūkha*, p. 137.)

The article '*cha*' is meant to include the daughter's son.—(*Dvaitaparishiṣṭa*, p. 42.)

'*Pitarau,*' stands for the (1) mother and (2) father; in this same order; as is clear from Viṣṇu's text.—'*Tatsutaḥ,*' nephew, brother's son.—'*Aputrasya,*' one who has no grandson, etc.—(*Vibhāgasāra*, 16. 2. 1.)

The terms '*Gotraja*' and '*bandhu*' here stand for all the relatives beginning with the *Brother's son* and ending with the *Samānodakas*.—(*Dāyanirṇaya*, 9. 2. 2.)

3. विष्णु 17. 4—13.] अपुत्रस्य [*v.l.*, अनपत्यस्य] धनं पत्न्यभिगामि। तदभावे दुहितृगामि। तदभावे पितृ [*v.l.*, मातृ] गामि। तदभावे मातृ [*v.l.*, पितृ] गामि। तदभावे भ्रातृगामि। तदभावे भ्रातृपुत्रगामि। तदभावे सकुल्य [*v.l.*, (*a*) बन्धु (*b*) सपिण्ड] गामि। तदभावे बन्धु [*v.l.*, सकुल्य] गामि। तदभावे शिष्यगामि। तदभावे सहाध्यायिगामि। तदभावे ब्राह्मणधनवर्जं राजगामि। ब्राह्मणधनं ब्राह्मणगामि।

The property of a sonless man goes to his wife; failing her, to his daughter; failing her, to his father [*v.l.*, mother]; failing him, to his mother [*v.l.*, father]; failing her to his brother; failing him, to his brother's son; failing him to *Sakulyas*; failing them, to *Bandhus*; failing them, to his disciple; failing him, to his fellow-student; failing him, the property shall go to the king, except the property of a Brāhmaṇa, which goes to a Brāhmaṇa.—(*Viṣṇu*, 17. 4–13.) [Quoted in *Vivādaratnākara*, p. 595; *Vivādachintāmaṇi*, p. 235; *Vivādachandra*, 24. 2. 1; *Mitākṣarā*, p. 727; *Aparārka*, p. 741; *Dāyabhāga*, p. 151; 206; *Smṛtitattva* II, p. 189; *Vyavahāramayūkha*, p. 142; *Vibhāgasāra*, 15. 1—8: *Dāyanirṇaya*, 9. 2. 3.]

NOTES

See III, 99

'*Bandhu*' (which is placed before '*Sakulya*') stands here for *Sapiṇḍa*, and '*Sakulya*' for the '*Sagotra*'—says *Mishra*.—(*Vivādaratnākara*, p 595.)

'*Bandhu*' here stands for *Sapiṇḍa*, and '*Sakulya*' for *Sagotra*.—(*Vivādachintāmaṇi*, p. 236.)

'*Bandhu*' here stands for the *Sapiṇḍa*.—(*Vibhāgasāra*, 15. 1–9.)—'*Sonless*' means one who has left no son or grandson or great-grandson. (*Ibid.*, 15. 1.—10.)

Here Viṣṇu declares the right of the wife to inherit the entire property.—(*Mitākṣarā*, p. 727.)

Here the wife's has been declared to be the first claim. It does not mean that the wife is to receive just enough for her maintenance; as it would be most illogical to take the same word '*dhanam*,' 'property,' as standing for

only a part of the property, in the case of the wife and for the entire property in the case of the brother and others. It has to be admitted that the wife is entitled to the entire property.—(*Dāyabhāga*, p. 151.)

Among nephews, the property goes first to the son of the uterine brother, and after him to the son of the non-uterine brother. The son of the non-uterine brother, when making the cake-offerings, offers it to the father of the deceased owner along with his own father's mother, and omits the mother of the deceased; to this extent, in relation to the deceased his position is lower (*i.e.*, remoter) than that of the son of the uterine brother of the deceased; this is the reason why his title to the property comes after that of the latter.—(*Dāyabhāga*, pp. 206-207.)

'*Aputra*' here means one who has no son or grandson or great-grandson. —(*Smṛtitattva* II, p. 189.)

After the mother comes the uterine brother; then the son of the uterine brother. Vijñaneshvara and others have held that after the uterine brother comes the step-brother, then the sons of the uterine brother.—But this is not right; because the term '*bhrātṛ*,' 'brother,' denotes the *uterine brother* primarily and the *step-brother* only figuratively (indirectly); and it would be wrong to take the word in the same sentence in both these connotations.—Others again have held that the term '*bhrātaraḥ*,' 'brothers,' is to be taken as a copulative compound including the *sister* also, so that in the absence of the brothers, the property should go to the sisters.—This is not right; because there is nothing to justify the suggested copulative compound.—In a case where, at the time of the uncle's death, the nephews had not acquired an interest in the uncle's property by reason of their father being alive at the time,—and subsequently their father has died,—when the uncle's property comes to be divided among the surviving brothers of the deceased and the said nephews, these latter shall receive the share that would have been their father's; this according to the principle laid down in Yājña. 2. 120.—'*Anekapitṛkāṇāntu*.'—(*Vyavahāramayūkha*, p. 142.)

The terms '*Sakulya*' and '*Bandhu*' stand for the relatives beginning with the brother's grandson and ending with the *Samānodakas*; otherwise, what is asserted here would be inconsistent with other *Smṛtis*.—'*Sonless*,'—*i.e.*, one who has left no son or grandson or great-grandson.—(*Dāyanirṇaya*, 9. 2—5.)

4. शङ्खः] स्वर्यातस्य ह्यपुत्रस्य [*v.l.*, अथापुत्रस्य स्वर्यातस्य] भ्रातृगामि द्रव्यम्। तदभावे पितरौ हरेयाताम्। ज्येष्ठा वा पत्नी।

Where a sonless man dies, his property goes to his brother; in the absence of the brother, his parents take it, or his senior wife.—(*Shankha*.) [Quoted in *Vishvarūpa*, p. 251; *Aparārka*, p. 741; *Mitākṣarā*, pp. 780, 757.]

NOTES

What is meant by the assertion that 'the property goes to his brother' is that it does so *when there is no wife or daughter*.—The terms '*jyeṣṭhā*,' 'senior,' stands for the wife who belongs to the same caste as her husband.—(*Vishvarūpa*, pp. 251-252.)

Here the order of precedence is different from that provided by Yājñavalkya.—(*Aparārka*, p. 741.)

What is stated here is that the property of a sonless man goes to his brother.—This refers to the case of *reunited* brothers.—(*Mitākṣarā*, pp. 757—759.)

5. बौधायन] सपिण्डाभावे सकुल्यः । तद्भावे आचार्योऽन्तेवासी ऋत्विग्वा हरेत् । तद्भावे राजा ।

In the absence of *Sapiṇḍas*, *Sakulyas* shall receive the property ; in the absence of *Sakulyas*, the teacher, the disciple or the priest ; in the absence of these, the king.—(*Baudhāyana*.) [Quoted in *Vivādachintāmaṇi*, p. 242.]

6. आपस्तम्ब] पुत्राभावे यः प्रत्यासन्नसपिण्डः । तद्भावे आचार्यः । तद्भावेऽन्तेवासीति । शिष्याभावे सब्रह्मचारी एकाचार्योपनीतोऽध्यापितो वा । सब्रह्मचारिणामप्यभावे श्रोत्रिया धनभाजः ।

Failing sons, the nearest *Sapiṇḍa* ; failing him, the teacher ; failing him, the disciple ; failing the disciple, the fellow-student, who has been initiated or taught along with the deceased; failing the fellow-students, Vedic scholars shall receive the property. (*Āpastamba*.) [Quoted in *Madanapārijāta*, p. 674.]

7. बृहस्पति] पुत्राभावे तु पत्नी स्यात् पत्न्यभावे [*v.l.*, तद्भावे] तु सोदरः ।
तद्भावे तु दायादः पश्चाद् दौहित्रकं धनम् ॥

In the absence of the son, the wife ; in the absence of the wife, the uterine brother ;—failing him, an inheritor ; last of all, it goes to the daughter's son.—(*Bṛhaspati*.) [Quoted in *Smṛtichandrikā*, pp. 674, 692 ; *Aparārka*, p. 742.]

NOTES

See III, 20 and 75.

The title of the wife to perform the *Shrāddha* comes before that of the brother.—(*Smṛtichandrikā*, p. 674.) This text is meant to preclude the uterine brother coming in before the wife, not to bring in the brother before the daughter and others included under the general term '*Dāyāda*,' 'inheritor.'—(*Ibid.*, p. 692.)

8. देवल] ततो दायमपुत्रस्य विभजेयुः सहोदराः ।
तुल्या दुहितरो वाऽपि ध्रियमाणः पिताऽपि वा ।
सवर्णा भ्रातरो माता भार्या चेति यथाक्रमम् ।
एषामभावे गृह्णीयुः सकुल्याः सहवासिनः ॥

The uterine brothers shall divide among themselves the property of a sonless man; or equal daughters, or the father if he be living, half brothers belonging to the same caste, mother or wife,—in due order. In the absence of these the co-resident *Sakulyas* shall take the property.—(*Devala.*) [Quoted in *Aparārka*, pp. 741, 744; *Vivādachintāmaṇi*, p. 241; *Dāyabhāga*, pp. 154, 169, 191; *Smṛtitattva* II, pp. 191; *Vivādaratnākara*, p. 593; *Viramitrodaya*, pp. 632, 668; *Dvaitaparishiṣṭa*, p. 42; *Vibhāgasāra*, 16. 2–4.]

NOTES

The first claim to succession is of the uterine brothers.—(*Aparārka*, p. 744.)

'*Tulyāḥ*,' uterine;—'*Savarṇā bhrātaraḥ*,' the step-brothers and others, Perceiving that the order of precedence set forth by Devala is contrary to that set forth by Yājñavalkya and Viṣṇu, Halāyudha has held the term '*yathākramam*' in Devala's text as to be taken to mean 'in consonance with the order of sequence *laid down by Yājñavalkya*.'—Such also is the opinion of the author of the *Kalpataru* who has quoted Yājñavalkya's and Viṣṇu's texts after having quoted that of Devala.—This however is not satisfactory. By the term '*yathākramam*' used by himself, a writer can never mean the *order* laid down by someone else, which is contrary to that laid down by himself. The right view therefore is that the order laid down by Yājñavalkya and Viṣṇu holds good in regard to ancestral property, and that laid down by *Paiṭhīnasi* Devala and others, to property other than ancestral.—(*Vivādachintāmaṇi*, pp. 241-242.)

Here the first claim is that of the brother, and the wife's is the last. Herein lies its opposition to what has been declared in Yājñavalkya. Some people reconcile this difference by saying that the brother's is the prior claim

in cases where the brothers had separated and then *reunited,* while the wife's prior claim is in cases where the brothers had separated and *not reunited.*—(*Dāyabhāga,* p. 154.)—'*Tulyāḥ,*' 'equal,' *i.e.,* belonging to the same caste as the father.—'*Brothers of the same caste,*'—*i.e.,* the step-brothers.—The order in which the persons are mentioned here dose not mean that this is the order of precedence among them; all that is meant is that all these are entitled to inherit and they shall inherit it in the order laid down by Viṣṇu and Yājñavalkya. That this is so is clear from the presence of such particles as '*vā*' and '*apivā,*' which signify option and hence indicate clearly that no significance attaches to this order in which the persons are named here.—(*Ibid,*, p. 169.)

In this series consisting of the wife, daughter of the same caste, father, mother, uterine brother, half-brother, as entitled to succeed,—we do not find any mention of the brother's son, from which it follows that the latter would be entitled to succeed only in the absence of all the aforesaid. The declaration that if one brother gets a son, all the brothers are 'with son' through that son,—applies only to the liability to offer *Shrāddha.* Thus the first claim is that of the brother; and among these, the uterine brother comes first; and the half-brother comes in only when there is no uterine brother.—(*Dāya-bhāga,* p. 191.)

'*Dhṛiyamāṇaḥ,*' living.—The particles '*vā,*' and '*apivā*' clearly indicate that no hard and fast rule is meant to be laid down in regard to the precise order of preference among those mentioned.—(*Smṛtitattva II,* p. 169.)

'*Tulyāḥ,*' uterine.—'*Father, if living*'—*and desirous of receiving the property,* this has to be added. According to Halāyudha '*yathākramam,*' 'in due order,' means 'in the order prescribed by Yājñavalkya'; and on this basis he has raised the question of the present text being in conflict with Paiṭhīnasi and others and has tried to reconcile the two by pointing out that the persons beginning with the 'wife' and ending with the '*Shrotriya*' are entitled to inherit the property of the sonless *Brāhmaṇa*; and those ending with the 'king' are entitled to inherit the property of the sonless *non-Brāhmaṇa.* In Devala's text, there is no order of succession laid down; hence the order has to be learnt from Yājñavalkya's and Viṣṇu's texts.—This same is the opinion of the *Kalpataru* also.—In reality, however, the text of Paiṭhīnasi—'*Aputrasya pramītasya bhratṛgāmi, etc.*'—refers to property other than that acquired by one's father, grandfather and other ancestors, which goes to the brothers, and in their absence to the mother and father; and among the other relatives mentioned, there is no order of succession intended. Hence there is no conflict.—(*Vivādaratnākara,* pp. 593-594.)

Here Devala has declared the title of the wife only in the absence of the brother and others. The term '*bhrataraḥ*' in the third line stands for *half-brothers,* the *full-brothers* having been separately mentioned (in the first line).

The conflict among the various texts regarding the exact order of succession has been sought to be explained by taking only Yājñavalkya's and Viṣṇu's texts as laying down the strict order of succession and all the other texts as declaing only the title of the persons to succession (without any regard

to the exact order).—But this explanation is not satisfactory. All the texts declare the order of succession, the discrepancies are due to considerations of the qualifications of the persons concerned; also the amount of benefit conferred by each upon the deceased owner.—(*Vīramitrodaya*, pp. 668 669.)

'*Tulyāḥ*,' uterine.—'*Brothers*'—half-brothers.—Finding this text of Devala to be in conflict with the texts of Yājñavalkya and Viṣṇu in regard to the order of succession, the term 'in due order' in Devala's text has been taken by Halāyudha to mean 'in the order prescribed by Yājñavalkya.'—This same is the opinion of the *Kalpataru* also where the texts of Viṣṇu and Yājñavalkya have been quoted after that of Devala.—This however is not satisfactory; when Devala has himself laid down an order of succession, the phrase 'in due order' in his text could not refer to the order prescribed in other texts. And further, even with this explanation of Devala's text, its conflict with Paiṭhīnasi's text remains unexplained.—Hence the only reasonable view is that in the case of ancestral property, the order of succession shall be as laid down by Viṣṇu and Yājñavalkya, and in the case of other properties, it will be as laid down by Paiṭhīnasi and others.—(*Dvaitaparishiṣṭa*, p. 43.)

The '*Savarṇā bhrātaraḥ*'—here meant are *half-brothers*.—(*Vibhāgasāra*, 16. 2—6.)

9. नारद] अभावे तु दुहितॄणां सकुल्या बान्धवास्तथा ।
ततः सजात्याः सर्वेषामभावे राजगामि तत् ॥

In the absence of daughters, the *Sakulyas* and the *Bāndhavas*; then persons of the same caste; in the absence of all, the property goes to the king.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 597.]

NOTES

See III, 111.

'*Sakulya*,' *i.e.*, the son of the father's brother and others.—(*Vivādaratnākara*, p. 597.)

10. अर्थशास्त्र II, p. 32.] तदभावे पिता धरमाणः । पित्रभावे भ्रातरो भ्रातृपुत्राश्च ।

In the absence of sons and daughters, the property goes to the father if he be living; in the absence of the father, it goes to the brothers or brother's sons.—(*Arthashāstra II*, p. 32.)

11. शङ्ख] भ्रातॄणामप्रजाः कश्चित् प्रेयात्चेत् प्रव्रजेत वा ।
विभजेरन्धनं तस्य शेषास्ते स्त्रीधनं विना ॥
भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयात् ।
रक्षन्ति शय्यां भर्तुश्चेदाच्छिन्द्युरितरासु तत् ॥
या तस्य दुहिता तस्याः पित्रंशे भरणं मतम् ।
आ संस्काराद्धरेद् भागं परतो विभृयात् पतिः ॥

(A) If among (reunited brothers) any one should die, or become a wandering mendicant, the others shall divide his property, except the *Stridhana*.—(B) They shall make provision for his wives till their death, in case they remain faithful to the bed of their husband ; should the wives be otherwise, they shall withdraw the provision.—(C) If he has left a daughter, her father's share would be meant for her maintenance ; till her marriage she shall retain that share ; after marriage, her husband shall maintain her.—(*Nārada*, 13. 25—27.)

NOTES

See II, 362 ; III, 49 III, 89.

12. बृहस्पति] यदा कश्चित् प्रमीयेत प्रव्रजेद्वा कथञ्चन ।
न लुप्यते तस्य भागः सोदरस्य विधीयते ॥
या तस्य भगिनी [*v.l.*, दुहिता] सा तु ततोंशं लब्धुमर्हति ।
अनपत्यस्य धर्मोऽयमभार्यपितृकस्य च ॥

If a man dies or goes out as a wandering mendicant, his share does not disappear ; it is ordained for his uterine brother ; if he has a sister (*v.l.*, daughter) she is entitled to receive a share out of it. This is the rule applicable to a case where the man dies leaving no children, no wife and no father.—(*Bṛhaspati.*) [Quoted in *Aparārka*, p. 748 ; *Vivādachandra*, 26.1—4 ; *Smṛtichandrikā*, p. 708 ; *Parāsharamādhava*, p. 364 ; *Vīramitrodaya*, p. 685 ; *Vyavahāramayūkha*, p. 152.]

NOTES

See II, 352.

This makes it clear that even in the case of reunited coparceners, if the wife, daughter and the rest are there, then the order of precedence in the

inheritance shall be as laid down by Yājñavalkya. The sister is to inherit only in the absence of uterine brothers.—(*Aparārka*, p. 748.)

This refers to the case of uterine brothers only ; not to that of all reunited coparceners.—(*Vivādachandra*, 26.1—4.)

This refers to a case where the man has also left no brother or mother —(*Smṛtichandrikā*, p. 708.)

The particle '*cha*' implies the absence of the mother and brother also. (*Parāsharamādhava*, p. 364.)

The particle '*cha*' implies the absence of the brother also.—(*Viramitrodaya*, p. 685.)

13. नारद] मृते पत्यौ तु भार्याः स्युः [*v.l.*, स्तु] भ्र [*v.l.*, स्व] भ्रातृपितृमातृकाः ।
सर्वे सपिण्डाः स्वधनं विभजेयुर्यथांशतः ॥

On the death of the husband, if there is no brother or father or mother of the deceased, his wives and all the *Sapiṇḍas* shall divide the property according to their respective shares.—(*Nārada.*) [Quoted in *Smṛtichandrikā*, p. 707 ; *Parāsharamādhava*, p. 364.]

NOTES

'*Bhāryāḥ abhratṛpitṛmātṛkāḥ*'—The wives, qualified by the absence of the husband's brother, father and mother. The meaning is that the property of a reunited coparcener dying sonless goes first of all to the brother,—failing him, to the father,—failing him, to the chaste wife. In the case of reunited coparceners, the absence of secondary sons alone does not entitle the wives to inherit the property,—but the absence also of the unreunited step-brother father and mother.—The meaning of the second line is as follows : If a reunited coparcener has died sonless, his *Sapiṇḍas*, other than his brother, father and mother,—*i.e.*, his brother's sons and others,—shall divide the property among themselves.—(*Smṛtichandrikā*, pp. 707-708.)

'*All the Sapiṇḍas*,'—the brother's sons and the rest.—'*Respective shares*'—the brother's sons receiving the share of their respective fathers and the wife receiving the share of her husband.—(*Parāsharamādhava*, p. 364.)

14. मनु 9. 187.] अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत् ।
अत ऊर्ध्वं सकुल्यः स्यादाचार्यः शिष्य एव वा ॥

The property shall always devolve upon him who is the nearest to the deceased *Sapiṇḍa* ; after these, a *Sakulya*, the

teacher or the disciple.—(*Manu* 9. 187.) [Quoted in *Smṛtichandrikā*, pp. 696, 708 ; *Parāsharamādhava*, p 364 ; *Smṛtitattva II*, p. 195 ; *Aparārka*, p. 744 ; *Mitākṣarā*, pp. 773, 777 ; *Vivādaratnākara*, p. 592 ; *Vivādachintāmaṇi*, p. 240 ; *Vīramitrodaya*, p. 669 ; *Vyavahāramayūkha*, pp. 143, 161.]

NOTES

See also Chap. III, Sec 107.

Among *Sapiṇḍas* the property shall go to each in the order of his proximity of relationship to the deceased. If the father is not living, it goes to the father's father ; failing this latter, to his father (the great-grandfather). The brother and the brother's sons are nearer to one than the father's father, the order of succession shall be—father—brother—brother's son—father's father, and so on—the *Samānodaka*,—the *Sagotra*—the maternal uncle and other *Bandhus* ; the succeeding one getting the property in the absence of the preceding.—Similarly on the death of the father's father, his property goes to his own son, not to his grandson.—'*Sakulya*,' the maternal uncle and other *Bandhus*. In the absence of these, the *teacher* or the *disciple*, whoever may be near at hand at the time.—(*Sarvajñanārāyaṇa*.)

Among *Sapiṇḍas*, one whose relationship is closer—be it male or female—receives the property of the deceased...... In the absence of all the thirteen kinds of sons, the property goes to the wife...... The declaration that 'the wife is to receive mere subsistence' is meant for cases where she is misbehaved. The title of the wife to inheritance has been denied by Medhātithi ; but that is wrong ; such title is supported by Bṛhaspati...... In the absence of the wife, the appointed daughter ; failing her the father and the mother ; failing these, the uterine brother ; failing him, the uterine brother's sons ;—then the father's mother, and so on the other *Sapiṇḍas*. In the absence of all the descendants of one's grandfather, the property shall go to the descendants of the great-grandfather ;—failing all these, it goes to the *Samānodaka*, then to the teacher and then to the disciple.—(*Kullūka*.)

First of all, the wife. The term '*Sakulya*,' includes the *Bandhu* also.—(*Rāghavānanda*.)

The nearmost *Sapiṇḍa* shall receive the property.—After the *Sapiṇḍas*—*i.e.*, in the absence of *Sapiṇḍas*, the *Sakulya*—*i.e.*, the *Samānodaka*—shall receive the property.—In the absence of these, the teacher ; and failing him, the disciple shall take the property.—(*Nandana*.)

'*Anantaraḥ*,' nearly related.—(*Rāmachandra*.)

If there are no sisters, the mere *Sapiṇḍas* shall receive the property of the deceased reunited coparcener in this order.—(*Smṛtichandrikā*, p. 708.)

Dhāreshvara has explained this text as follows : The starting point here is the father. "*Question*—The 'nearest' to the father is the father's father as well as the father's son ; where both these are present, which of them would be regarded as the *nearest* ?" *Answer*—The father's son would be the *nearest*,—why ?—Because the grandfather has not been mentioned as normally inheriting one's property—in such text as 'the property of the sonless

man shall be taken by his father or brothers.'—Thus the implication of the present text is that—if there are no descendants of the father of the deceased, the descendants of the father's father come in, and in the absence of these latter, the descendants of the great-grandfather and so on; if there are no *Sapiṇḍas*, the *Sakulyas*,—*i.e.*, the *Samānodakas*—come in; among these also, in the absence of the nearer relative, the remoter one comes in. Thus then those people who hold that "after the brother's son, the father's father takes the property, and if the father's father is not there, then the descendants of this latter; and so on from the great-grandfather onwards,"—have not understood the real meaning of the texts laying down the order of succession. The order of succession is as follows: On failure of the brother's son, the son of the grandfather (father's father) takes the property,—after that the son of the great-grandfather,—after that the son of the great-great-grandfather,—after that the last of the *Sapiṇḍas*,—after that the son of that last *Sapiṇḍa*,—after that the first among the *Samānodakas*, after that the son of this latter,—and so on till the descendant of the sixth degree of *Samānodakas*. This is what has been asserted by Bṛhaspati in the text—'*Bahavo jñyātayo yatra, etc.*'

The 'nearness' of the *Sapiṇḍa* has been defined by Manu himself under 9. 186—'*Trayāṇāmudakam kāryam, etc.*'—(*Aparārka*, p. 744.)

This 'nearness' is the determining factor, not only among *Sapiṇḍas*, but also among the *Samānodakas* and others also. —(*Mitākṣarā*, p. 774)—among brothers, the uterine ones are the first to inherit the property, because of the relationship of the step-brothers being a step further removed by the intervention of their mother.—(*Ibid.*, p. 777.)

'*Anantaraḥ*,' near.—(*Vivādaratnākara*, p. 592.)

Nearness of relationship to the deceased is the determining factor in the title to inheritance.—(*Vyavahāramayūkha*, p. 161.)

The *Sapiṇḍa* and others shall inherit the property in the order of the proximity of their relationship to the deceased.—(*Parāsharamādhava*, p. 364.)

'*Sapiṇḍāt*'—among the *Sapiṇḍas* of the deceased, each one shall inherit the property in the order of the nearness of his relationship to the deceased. *Kullūka Bhaṭṭa* gives the same explanation.—(*Smṛtitattva II*, p. 195.)

15. बृहस्पति 25. 60.] मृतोऽनपत्योऽभार्यश्चेदभ्रातृपितृमातृकः ।
सर्वे सपिण्डास्तद्दायं विभजेरन् यथांशतः ॥

When a man dies leaving no issue, nor wife, nor brother, nor father, nor mother,—all his *Sapiṇḍas* shall divide his property in due shares.—(*Bṛhaspati*, 25. 60.) [Quoted in *Smṛtichandrikā*, p. 709; *Parāsharamādhava*, p. 364; *Vīramitrodaya*, pp. 685.]

NOTES

'*His property*,'—*i.e.*, the property of the reunited coparcener.—In the absence of *Sapiṇḍas*, the property of the dead reunited coparcener shall go to *Sakulyas*.—(*Smṛtichandrikā*, p. 709.)

'*Taddāyam,*'—the property of the reunited coparcener.—What the first line means is the absence of all those persons who have been named as inheritors of the reunited property.—In the absence of *Sapiṇḍas*, the *Samānodakas* are to receive the property in the order of the relative proximity of their relationship to the deceased.—(*Vīramitrodaya*, p. 685.)

16. कात्यायन] अपुत्रस्याथ कुलजा पत्नी दुहितरोऽपि वा ।
तदभावे पिता माता भ्राता पुत्राः प्रकीर्तिताः ॥

When a man dies sonless, his nobly-born wife, his daughters,—in their absence his father, mother, brothers, (their) sons,—are declared (to be his heirs).—(*Kātyāyana.*) [Quoted in *Vīramitrodaya*, p. 632; *Vyavahāramayūkha*, p. 141; *Smṛtichandrikā*, p. 693.]

NOTES

See III, 79.

From all this it follows that the wife's is the first claim to inherit the property of a man dying sonless.—(*Vīramitrodaya*, p. 652.)

17. बृहस्पति] येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः ।
तेषां धनं हरेद्राजा सर्वस्याधिपतिर्हि सः ॥

When a Kṣattriya, a Vaishya and a Shūdra die without sons, wives, and brothers,—the king shall take their property; as he is the lord of all.—(*Bṛhaspati.*) [Quoted in *Dāyabhāga*, p. 168.]

18. पैठीनसि] अपुत्रस्य स्वर्यातस्य भ्रातृगामि धनम् । तदभावे मातापितरौ लभेयाताम्—पत्नी वाऽज्येष्ठा । सगोत्रशिष्यसब्रह्मचारिणः ।

If a man dies sonless his property goes to his brother; in the brother's absence his mother and father shall receive it, or his junior wife; then the Sagotra, the pupil and fellow-pupils. (*Paiṭhīnasi.*) [Quoted in *Aparārka*, p. 744; *Vivādaratnākara*, p. 592; *Dvaitaparishiṣṭa*, p. 42; *Vibhāgasāra*, 16. 2—4.]

NOTES

See III, 80 and 88.

This should be taken as referring to cases where there are brothers who had acquired property for themselves without drawing upon the ancestral property and who had *not* (?) been divided.—If there are no such brothers, the property goes to the parents, or the junior wife. Brothers other than those mentioned before are to inherit in accordance with the order prescribed by Yājñavalkya.—(*Aparārka*, p. 744.)

'*Junior wife*'—stands here for one who is faithful to her husband but keeps only a few of the restrictions prescribed for widows,—not one who keeps *all* the restrictions strictly; as the claims of the latter to inherit her husband's property would be superior to those of his brother; nor can the unchaste widow be meant, as she has been declared to be fit for being turned out of the house.—The term '*Sabrahmachārī*' here stands for the fellow-student.—What Shaṅkha has said in regard to the widow being entitled to mere maintenance, refers to the unchaste widow who does not observe the restrictions prescribed for widows.—What Yājñavalkya has declared regarding the title of the parents being superior to that of the brother's, refers to ancestral property; what had been acquired by the deceased without drawing upon the ancestral property,—to that the title of the brothers would be superior to that of the parents.—(*Vivādaratnākara*, p. 593.)

Section 2

THE WIFE AS HEIR OF THE SONLESS PERSON

19. याज्ञ 2. 136.] पत्नीदुहितरः etc. [see above III. 2.]

20. कात्यायन] पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणी ।
तदभावे तु दुहिता यद्यनूढाऽप्रतिष्ठिता [*v.l.*, भवेत्तदा] ॥

The wife who is chaste shall inherit the husband's property ; in her absence, the daughter, if she is unmarried and unsettled.--(*Kātyāyana.*) [Quoted in *Mitākṣarā*, pp. 727, 766, 767 ; *Madanapārijāta*, p. 672 ; *Smṛtichandrikā*, p. 686 ; *Parāsharamādhava*, p. 357 ; *Vīramitrodaya*, pp. 631, 660 ; *Vyavahāramayūkha*, pp. 137, 141.]

Notes

See III, 64.

This makes it clear that if there is one married and one unmarried daughter, the property shall go to the unmarried one.—(*Mitākṣarā*, p. 767.)

When there is one unmarried and one married daughter, it is the unmarried daughter who inherits the property ; and the married daughter receives it only if there is no unmarried daughter. Among the married ones, the one that is poor receives the property.—(*Madanapārijāta*, p. 672.)

The texts of Kātyāyana are to be taken as referring to unmarried daughters, or to such unmarried daughters as are poor.—'*In her absence*,'—*i.e.*, in the absence of the *chaste wife*. That is, the daughter shall receive the property not only when there is no wife at all, but when there is no wife *who is chaste*.—(*Smṛtichandrikā*, p. 686.)

If among the daughters one is married and the other unmarried, then it is the unmarried one that inherits the property.—'*Apratiṣṭhitā*'—'*unsettled*,' *i e.*, poor.

The law on this point is thus summed up in the *Dāyanirṇaya*, 5. 2—6 : When a man dies sonless, his property goes (1) to his wife belonging to the same caste as himself ; she will also perform his *Shraddha* ; if the Brāhmaṇa leaves no Brāhmaṇa wife, his property goes to (2) his Kṣattriya wife ;—the other wives are entitled to mere maintenance :—all wives have complete ownership over their *Strīdhana*,—except over the immoveable property given to them by the husband, which they cannot give away or sell.—So long as the wife remains in the husband's family, she is entitled to his property for purposes of maintenance.

21. बृहस्पति] पुत्राभावे तु पत्नी स्यात् तदभावे तु सोदरः ।
तदभावे तु दायादः पश्चाद् दौहित्रिकं धनम् ॥

NOTES

See III, 7 and 75.

22. बृहस्पति and कात्यायन] मृते भर्तरि भर्त्रंशं लभेत कुलपालिका ।
यावज्जीवं न हि स्वाम्यं दानाधमनविक्रये ॥

On the husband's death, the wife who guards the purity of the family receives his property as long as she lives; but she has no right to give away, mortgage or sell the property.—(*Bṛhaspati* and *Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 677; *Vīramitrodaya*, p. 626; *Vyavahāramayūkha*, p. 138.]

NOTES

'*Kulapālikā*,'—one who guards the purity of the race, *i.e.*, remains chaste.—What is meant by her having no right to make gifts, etc., refers to such gifts as those made to dancers and others, and not to such religious gifts as are made for providing food for old persons and orphans and the like; so that she has a perfect right to make religious gifts. That this is so is made clear by the text of Kātyāyana—'*Vratopavāsaniratā*. . . *dharmadānaratā*, etc., etc.'—(*Smṛtichandrikā*, p. 677.)

The meaning is that when the wife has inherited her husband's property, all the use that she is entitled to make of it is to maintain herself, and she is not to make any gift, or mortgage the property or sell it. But this refers to only such gifts as those made to dancers and the like. She is perfectly entitled to make religious gifts and also to mortgage or sell the property for the purpose of making such gifts.—(*Vīramitrodaya*, p. 626; *Vyavahāramayūkha*, p. 138.

23. कात्यायन] स्वर्याते स्वामिनि स्त्री तु ग्रासाच्छादनभागिनी ।
अविभक्ते धनांशं तु प्राप्नोत्यामरणान्तिकम् ॥

On the death of her husband, the woman is entitled to food and raiment; or, in the event of his being an undivided coparcener, she receives a portion of the property till her death.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 698; *Vīramitrodaya*, p. 654; *Vyavahāramayūkha*, p. 139.]

NOTES

'*Dhanāmsham*,' 'portion of the property,'—*i.e.*, that much of wealth which would be needed for living in comfort and for the due performance of all those obligatory and occasional duties and fasts and penances to which a woman is entitled. The particle '*tu*' stands for '*va*'; the meaning being—'*or* she receives a portion of the wealth; or she receives landed property sufficient to yield the said wealth.—Of the two alternatives laid down in this text, the former is meant for women other than the '*patnī*' (consort in religion), wife, for whom mere maintenance has been provided.—(*Smṛtichandrikā*, p. 678.)

The particle '*tu*' stands for '*vā*,' 'or'; so that the meaning is 'she receives directly only food and raiment; *or* such portion of the property as would suffice for her performance, throughout her life, of those necessary duties to which a woman is liable.'—In view of the phrases 'portion of the property' and 'as long as she lives,' we have to reject the view that she inherits the entire property of her undivided husband.—It will not be right to argue that as the text has used the term '*strī*,' 'woman,' it must refer to a woman, other than the 'wife'; as in that case the term 'in the event of his being undivided' would be superfluous; as the woman other than the *wife*, if she is sonless, has been declared to be entitled to maintenance, on the death of her husband, even when divided.—(*Vīramitrodaya*, p. 654.)

The term 'undivided' includes the 'reunited' also.—The particle '*tu*' stands for '*vā*,' 'or.' Thus there are two alternatives, the latter being meant for the *wife*, and the former for the *kept woman*; so says Madana. But the authority for this distinction has to be found. The real rule on the subject has been laid down by Kātyāyana himself in another text—'*Bhoktumarhati*, etc.'—(*Vyavahāramayūkha*, p. 139.)

24. शतपथब्राह्मण 5. 2. 1—10.] अर्धो ह वा एष आत्मनो यज्जाया ।

Verily the wife is half of the man.—(*Shatapatha Brāhmaṇa*, 5. 2. 1—10.)

25. बृहस्पति 25. 46—52.] आम्नाये स्मृतितन्त्रे च लोकाचारे च सूरिभिः ।
(A) शरीरार्धं स्मृता जाया पुण्यापुण्यफले समा ॥
(B) यस्य नोपरता भार्या देहार्धं तस्य जीवति ।
जीवत्यर्धशरीरेऽर्थं कथमन्यः समाप्नुयात् ॥
(C) कुल्येषु विद्यमानेषु पितृमातृसनाभिषु ।
[*v.l.*, सकुल्यैर्विद्यमानैस्तु पितृमातृसनाभिभिः] ।
असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी ॥
(D) पूर्वं प्रमृता [*v.l.*, मीता] त्वग्निहोत्रं मृते भर्तरि तद्धनम् ।
विन्देत् पतिव्रता साध्वी धर्म एष सनातनः ॥
(E) जङ्गमं स्थावरं हेमकुप्यं धान्यं रसाम्बरम् ।
आदाय दापयेच्छ्राद्धं मासषाण्मासिकाब्दिकम् ॥
(F) पितृव्यगुरुदौहित्रान् भर्तुः स्वस्रीयमातुलान् ।
पूजयेत् कव्यपूर्ताभ्यां वृद्धानाथातिथीन् स्त्रियः ॥
(G) तत्सपिण्डा बान्धवा वा ये तस्याः परिपन्थिनः ।
हिंस्युर्धनानि तान् राजा चौरदण्डेन शासयेत् ॥

(A) In the revealed text (of the Vedas), in the Smṛti, and in popular usage, the wife has been declared by the wise ones

to be half the body (of her husband), equal sharer in the fruits of merit and demerit.—(B) Of him whose wife is not dead, half his body survives; how then could anyone else take his property while half his body lives?—(C) Although his kinsmen, his father, his mother and uterine brothers be living, the wife of a man dying sonless shall succeed to his share.—(D) The wife dying before her husband takes away his consecrated fire; if the husband dies before her, the good wife, faithful to her lord, takes his property. This is the eternal law.—(E) After having received the moveable and immoveable property, the gold and base metals, the grain, liquids and clothes, she shall have his monthly, six-monthly and annual *Shrāddhas* performed.—(F) She shall propitiate with funeral offerings and charities her husband's paternal uncles, teachers, daughter's sons, sister's sons and maternal uncles, also aged and helpless persons, guests and women.—(G) If agnates or cognates, inimical to her, should injure her property, the king shall inflict on them the punishment ordained for the thief.—(*Bṛhaspati*, 25. 46—52.) [Quoted in *Mitākṣarā*, p. 728; *Aparārka*, p. 740; *Vivādaratnākara*, p. 589; *Vivādachintāmaṇi*, p. 236; *Parāsharamādhava*, pp. 353, 360; *Smṛtichandrikā*, pp. 673, 674, 676; *Dāyabhāga*, pp. 149-150, 173; *Vīramitrodaya*, pp. 624-625, 631; *Vyavahāramayūkha*, pp. 137-138; *Vibhāgasāra*, 15. 2. 2; *Dāyanirṇaya*, 4. 2-6.]

NOTES

(C) ['*Kulyēṣu*,' 'kinsmen';—this term is meant to include all *Sapiṇḍas* other than the 'father' and 'brothers' specifically mentioned, also daughters, daughter's sons and so forth;—the term '*pitā*,' 'father,' includes the mother also; and the term 'brother' includes the sister—'*Bhāga*,' 'share,' stands for *property*.—(*Bālambhaṭṭī*, on *Mitākṣarā*, p. 728).]

(C) This declares the wife's to be the first claim:—(*Parāsharamādhava*, p. 353.)

In the absence of the primary and secondary sons,—even though the father and other relations down to *Sakulyas* be there,—the wife is entitled to inherit the property of her husband.—(A) The second line of the first verse is meant to indicate the greater closeness of relationship of the wife than that of the father and others. The Vedic text referred to here is '*Ardho vā eṣa ātmanaḥ yat patnī*,' 'the wife is the half of the man's self,'—where 'self' stands for the *body*; the meaning is that the wife is as helpful to the secular and spiritual welfare of the man as the half of his own body.—'*Smṛtitantra*' is *Dharma-shāstra*, where we have such declarations as that 'if a man's wife drinks wine, half of his body falls off' and so forth.—'*Lokāchāra*' stands for

Arthashāstrā.—'*The fruits of merit and demerit*';—because the husband and wife are conjointly entitled to the performance of religious acts.—(C) '*Sonless*,' having no primary or secondary sons.—'*Patnī*,' 'wife,' stands for one who has been duly married in the '*Brāhma*' or such other forms of marriage as entitles her to join her husband at religious performances;—this term excludes all those not so married. The term '*patnī*' also indicates that the wife's capability to perform the *Shrāddha* and other rites is also indicative of her title to inherit the property.—(D) The term '*Agnihotra*' stands here for the *consecrated fire* with which the *Agnihotra* is performed;—'*Pativratā*,' self-controlled.—The term '*nārī*' here stands for the *wife* (not for *woman* in general), as she is spoken of in connection with the performance of *Agnihotra*.—(E) '*Kupya*,' base metals, such as lead, zinc and the like.—'*Kavyam*' stands for food dedicated to *Pitṛs*, and '*Pūrtam*' for such fees and gifts as accompany works of public utlity like the digging of tanks and the like. The meaning is that having received all the property, including the immoveable property, the wife shall perform all those acts requiring wealth to which the wife is entitled, such as *Shrāddhas*, *works of public utility*, charities and so forth—which are conducive to her own and her husband's spiritual welfare,—with the help of those priests and preceptors that are allied to the family of her husband.—The wife's title to inheritance here set forth refers to cases where the husband has been a 'divided' member of the family.—(*Smṛtichandrikā*, pp. 673—675.)

What these seven verses declare is that—'when a man dies sonless, all his property—immoveable, moveable, gold and so forth,—go to his wife, even when his uterine brother, paternal uncle, daughter's son and others are there;—and those who oppose her or take away the property themselves should be punished like thieves.' And this entirely rejects the view that 'even when the wife is there, the property shall go to the father, brother or other relations of the deceased.'—(*Dāyabhāga*, pp, 150-151.)—(F) The meaning is that for the due performance of the *Shrāddhas* of her husband, she shall give adequate wealth to the uncle and other relations of her husband. The term '*uncle*' here stands for *Sapiṇḍas* in general; the term '*daughter's sons*' stands for all *descendants* of the husband's daughter; similarly, '*sister's son*' stands for the husband's sister's *descendants*; and the term '*maternal uncle*' for the husband's mother's family She shall give the money to these, and not to her own father and other relations, so long as the husband's relations are there. She can do so, however, with the consent of these.—(*Ibid.*, p. 173.)

What is meant is that the person entitled to inherit the husband's property is the wife who has been associated with him in the performance of all *Shrauta* and *Smārta* rites.—'*Kupyam*' stands for zinc, lead and other base metals.—The meaning is that having inherited all her husband's property, including the immoveable, the wife shall propitiate her husband's relatives and perform all those acts requiring the expenditure of wealth to which she is entitled and which would be conducive to her husband's and her own spiritual welfare; and while she is doing all this, if any men harass her, they should be punished like thieves.—(*Vīramitrodaya*, pp. 624-625.)—These texts lay down the first claim of the wife on the property of her husband, who has died sonless, having been 'divided' from his family and not 'reunited'—(*Ibid.*, p. 631.)

'*Agnihotram*,' the consecrated fires.—'*Kupyam*,' zinc, lead and the like.—(*Vyavahāramayūkha*, pp. 137-138.)

The specification of the *Shrāddhas* indicates the meaning of the whole context to be that the widow shall perform the first *Shrāddha* as well as the annual *Shrāddhas*, and she shall receive the property also.—This refers to cases where the husband has been divided from his coparceners.—'*Pativratā*,' chaste; it cannot mean 'devoted to the service of the husband'; as this would not be possible after the husband's death. Thus then the meaning is that if the widow remains chaste, she shall inherit the husband's property, if the latter has left no son, son's son or son's son's son.—(*Vivādachintāmaṇi*, p. 227.)

The upshot of the whole is that if a man dies childless, the liability of performing his *Shrāddha* falls on his wife, and it is she that is entitled to inherit his entire property. This refers to cases where the husband has been divided from his coparceners.—'*Pativratā*,' chaste.—If the man has died as an undivided member of a joint family, and his widows have no children, then the head of the family shall give something and also old but untorn clothes to his widowed daughters-in-law.—(*Vibhāgasāra*, 15. 2—7.)

(C) '*Sonless*,—*i.e.*, who has left no son or grandson or great-grandson.—(*Dāyanirṇaya*, 4. 2—7.)

26. बृहस्पति 25. 53.] यद्विभक्ते धनं किञ्चित् आध्यादि विविधं स्मृतम्।
तज्जाया स्थावरं मुक्त्वा लभते मृतभर्तृका ॥

If the husband had been divided (from his coparceners), his wife shall take, on his death, all the property in the shape of pledges and other things, excepting immoveable property.—(*Bṛhaspati*, 25. 53.) [Quoted in *Smṛtichandrikā*, p. 676; *Parāsharamādhava*, p. 360; *Vīramitrodaya*, p. 625; *Vyavahāramayūkha*, p. 138.]

NOTES

Whatever in the shape of pledges and the rest is regarded as property—moveable and immoveable,—all that belonging to her husband the widow shall receive,—if the husband had been separated from his coparceners. The addition of this last condition indicates that in case the husband has not been so divided, the property shall go to his father, brother and other co-residents.—'*Jāyā*' is wife.—'*Excepting immoveable property*,'—this refers to cases where the wife has no daughter.—(*Smṛtichandrikā*, p. 676.)

What this exclusion of the wife from inheriting immoveable property means is that she is not to sell the property without the consent of the other coparceners.—(*Parāsharamādhava*, p. 360.)

The *Smṛtichandrikā* has quoted this text of Bṛhaspati's as excluding the widow from inheriting her husband's immoveable property; and in order to reconcile it with the text (of Prajāpati) which entitles her to inherit 'moveable

and immoveable property ; it has been taken by others as referring to a widow with no character, or to cases where the husband was an undivided coparcener ; but the *Smṛtichandrikā* has decided that it refers to cases where the widow has no daughter.—But this text itself is baseless, not authoritative ; as it has not been quoted in the *Mitākṣarā* or the *Kalpataru* or by Halāyudha and others.—If it be regarded as authoritative, it has to be taken as referring to wives married in the '*Āsura*' and other inferior forms of marriage ; as it uses the common term '*jāyā*,' while the other text declaring her title to inherit all kinds of property has to be taken as referring to wives married in the '*Brāhma*' and other commended forms of marriage ; as it uses the term '*patnī*,' the 'consort in religion.'—Such distinction is made by the *Madanaratna*.—(*Vīramitrodaya*, pp. 625-626.)

This refers to cases where the widow has no daughter.—(*Vyavahārāmayūkha*, p. 138.)

27. बृहस्पति 25. 54.] वृत्तस्थाऽपि कृतेऽप्यंशे न स्त्री स्थावरमर्हति ।
प्रदद्यात्स्वेव पिण्डं च क्षेत्रांशं वा यदीच्छति [यदृच्छया] ।

A wife, though preserving her character, is not entitled to inherit immoveable property, even though the share (of her husband) may have been separated. They shall give her food or a portion of arable land at will.—(*Bṛhaspati*, 25. 54.) [Quoted in *Smṛtichandrikā*, pp. 676, 679 ; *Vīramitrodaya*, pp. 625, 654 ; *Vyavahāramayūkha*, p. 138.]

NOTES

This clearly sets aside the view that the foregoing text (*Bṛhaspati*, 25. 53) refers to cases where the widow is not chaste. Immoveable property being meant for the maintenance of offspring, a woman would be entitled to receive it only when she had offspring, so that a woman who has no offspring,—even though she may be quite chaste—would not be entitled to immoveable property, even in cases where the husband has been a 'divided' member.—(*Smṛtichandrikā*, pp. 676-677.)—The term '*piṇḍa*' stands for *food and clothing*. Thus the meaning is that she is to receive food and clothing or such lands as would yield enough for the purposes of food and clothing. This is to be given, in cases where the husband has died undivided, for maintenance to a widow other than the wife who would be entitled to inherit her husband's share. The particle '*eva*' serves the purpose of emphasising the necessity of making the provision.—The former of the two alternatives (that she shall be given only food and clothing) is meant for those cases where the widow is not obedient to her mother-in-law and other elders.—(*Ibid.*, p. 679.)

This provision has to be made by the brother or other relations who may have inherited the property of the deceased.—(*Vīramitrodaya*, p. 655.)

28. बृहस्पति] व्रतोपवासनिरता ब्रह्मचर्ये व्यवस्थिता ।
धर्मदानरता नित्यं अपुत्राऽपि दिवं व्रजेत् ॥

A widow who is engaged in observances and fasts, firm in her chastity and devoted to religion and charity, shall go to heaven even though she may have no son.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 677; *Vīramitrodaya*, p. 626; *Vyavahāramayūkha*, p. 138.]

NOTES

This indicates that the widow must have some independent property; as without it, it would not be possible for her to be constantly devoted to charity. It must be admitted therefore that the widow is entitled even to mortgage and sell property for the purpose of obtaining wealth needed for the performance of religious acts.—(*Smṛtichandrikā*, p. 677.)

The mention of 'going to heaven' implies that she is entitled to the performance of such acts as are done with a view to definite rewards,—to say nothing of those that are obligatory and occasional. This text shows that she is entitled to pledge and sell property for the purpose of making gifts and such acts.—(*Vīramitrodaya*, p. 626.)

29. बृहस्पति 25. 55.] भर्तुर्धनहरी पत्नी ।

The wife is entitled to inherit her husband's property.—(*Bṛhaspati*, 25. 55.) [Quoted in *Mitākṣarā*, p. 766.]

30. कात्यायन] अपुत्रा शयनं भर्तुः पालयन्ती गुरौ स्थिता ।
भुञ्जीतामरणात् क्षान्ता दायादा ऊर्ध्वमाप्नुयुः ॥

The sonless widow, faithful to her husband's bed, and living with her elders, shall patiently enjoy (the husband's property) till her death; after her the heirs shall receive it.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 677; *Parāsharamādhava*, p. 358; *Vīramitrodaya*, p. 627; *Dāyabhāga*, p. 171; *Vivādachintāmaṇi*, p. 218; *Vivādachandra*, 22. 1—7; *Vivādaratnākara*, p. 511; *Vibhāgasāra*, 10. 1—12; *Dāyanirṇaya*, 5. 2—3.]

NOTES

See IV, 22.

Kṣāntā,'—*i.e.*, bearing with all the obstacles that her coparceners place in the way of her making use of her wealth.—This refers to cases where the husband having been undivided from his coparceners, the father-in-law and others happen to be either unable to protect and maintain her or engaged in other kinds of business, and the widow has therefore taken by herself the undivided property for the purpose of maintaining herself.—(*Smṛtichandrikā*, p. 677.)

[After quoting the above from the *Smṛtichandrikā*]—But the ancients have explained the text as follows: Living with her elders—*i.e.*, the father-in-law and the rest,—the widow shall only enjoy her husband's property, but not give or pledge or sell it, like her *Strīdhana*; after her 'her heirs'—her daughter and others entitled to inherit that property (according to Yājñavalkya's text '*Patnī duhitaraḥ, etc.*')—shall receive the property, not her agnates; because the rights of these latter have been interrupted by the coming in of the widow; nor will the property in question go to those persons who are entitled to the widow's *Strīdhana* property. It will go to those persons mentioned in Yājñavalkya's text after the 'wife' and in the same order.—(*Viramitrodaya*, pp. 627-628.)

Living in the husband's house, with her elders—father-in-law and the rest—the widow shall enjoy her husband's property; but she shall not be free to give away, pledge or sell it. After her death, the property shall go to the 'daughter' and others who are entitled to inherit that property; it shall not go to the agnates; the claims of these latter being lower than those of the daughter and others, on account of having been interrupted by the intervention of the widow.—(*Dāyabhaga*, pp. 171-172.)

The second line refers to immoveable property.—'*Kṣāntā*,' not transgressing the bounds of propriety.—(*Vivādachintāmaṇi*, p. 218.)

The husband's immoveable property, the widow can only enjoy; she cannot give it away.—(*Vivādachandra*, 22. 1—7.)

In regard to the immoveable property, it is said that she shall enjoy it till her death; after which the coparceners shall obtain it.—(*Vivādaratnākara*, p. 511.)

On the husband's death, with the exception of the immoveable property, the rest of the property she shall enjoy as long as she lives, and on her death, the property goes to the coparceners. If there is no property, she should pass her days in the husband's family. In regard to immoveable property the woman has no right to give or sell it. Hence there is no conflict between the texts of Nārada and Kātyāyana. Thus in regard to the immoveable property that has come to the woman from her husband, she has no right to give or sell it; but over such immoveable property as forms part of her '*Saudāyika*' property, she has perfect right to do what she likes. This refers to the husband's property which has passed on to the woman either directly or through her son. But she is entirely free to do what she likes in regard to such immoveable property as she may have acquired herself by her own efforts, either during the husband's lifetime or after his death. Because the general principle is that one is free to do what one likes in regard to what 'one has oneself acquired'; nor is there any text that denies such freedom. It is on the same principle that when the wife has offered the cake to her husband and thereby acquired his immoveable property, she is regarded in practice to be free to do what she likes with it. This same reason lends strength to the custom that the appointed son of the wealthy woman succeeds to the said immoveable property.—(*Vibhāgasarā*, 10. 2. 2.)

This refers to cases where the wife inherits the husband's property.—'*Faithful, etc.*'—*i.e.*, not having recourse to any other man;—'*living with elders*,' in her husband's family;—'*patiently*,'—*i.e.*, not spending much; nor disposing of it by gift or sale or mortgage.—'*Heirs*,'—the daughter and the rest.—(*Dāyanirṇaya*, 5. 2—4.)

31. सङ्ग्रहकार] भ्रातृषु प्रविभक्तेषु संसृष्टेष्वप्यसत्सु च।
गुर्वादेशान्नियोगस्था पत्नी धनमवाप्नुयात् ॥

The brothers (of the deceased man) having been divided, and there being no reunited coparceners, his wife, who is under Appointment by the order of her elders, shall receive his property.—(*Sangrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 681 ; *Parāsharamādhava*, p. 357.]

NOTES

Here the qualification regarding her being 'appointed' is in accordance with the view of Dhāreshvara ; but it has to be rejected as it has been entirely refuted. Hence all that can be accepted of this text is that the widow possessed of the qualifications enumerated by *Vṛddha-Manu* (chastity and the like) shall inherit the entire property of the husband.—(*Smṛtichandrikā*, p. 681.)

32. महाभारत दानधर्म] स्त्रीणां स्वपतिदायस्तु उपभोगफलः स्मृतः।
नापहारं स्त्रियः कुर्युः पतिदायात् [*v.l.*, वित्तात्] कथंचन ॥

The wife's inheritance of the husband's property has been declared to rest in mere enjoyment ; women shall, in no case, dispose of the property of their husbands.—(*Mahābhārata-Dānadharma.*) [Quoted in *Vivādachintāmaṇi*, p. 238 ; *Vīramitrodaya*, p. 228 ; *Dāyabhāga*, p. 173 ; *Dāyanirṇaya*, 5. 2—6.]

NOTES

'Disposal' stands for giving, selling and the like, at will.—(*Vivādachintāmaṇi*, p. 238.)

The 'enjoyment' permitted should not be in the form of wearing fine clothes and the like ; it is only the mere maintaining of the body for the spiritual benefit of the husband.—(*Vīramitrodaya*, p. 628.)

[The same as in *Vīramitrodaya*, then.]—The making of such gifts also is sanctioned as are made in connection with *Shrāddhas* offered to the husband.—(*Dāyabhāga*, p. 173.]

'*Enjoyment*,'—*i.e.*, she shall spend only that much which may be required for her maintenance.—(*Dāyanirṇaya*, 5. 2—6.)

33. कात्यायन] भोक्तुमर्हति कॢप्तांशं गुरुशुश्रूषणे रता।
न कुर्याद्यदि शुश्रूषां चेलपिण्डे नियोजयेत् ॥

She can enjoy the allotted share if she is devoted to the service of her elders. In case she is not devoted to their service, she shall receive only food and clothing.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 679 ; *Vyavahāramayūkha*, p. 140.]

NOTES

'*The allotted share,*'—supply '*apahṛtya,*' 'having taken.'—(*Smṛtichandrikā*, p. 679.)

'*Elders,*'—the father-in-law and others. The meaning is that with the permission of the elders she shall receive the share in the property ; otherwise she shall receive only food and clothing.—(*Vyavahāramayūkha*, p. 140.)

34. ?] दम्पत्योर्मध्यगं धनम् ।

Property is common between husband and wife.—(?) [Quoted in *Smṛtitattva II*, p. 179.]

NOTES

'*Madhyagam,*'—*i.e.*, there is joint ownership. This ownership of the wife over the husband's property is only during the lifetime of her husband.—(*Smṛtitattva II*, p. 179.)

35. व्यास] असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः ।
पितामह्यश्च सर्वास्ता मातृतुल्याः प्रकीर्तिताः ॥

The sonless wives of the father have been declared to be entitled to equal shares ; so also have all the paternal grandmothers been declared to be equal to mothers.—(*Vyāsa*.) [Quoted in *Aparārka*, p. 730 ; *Vivādachintāmaṇi*, p. 205 ; *Parāsharamādhava*, p. 341 ; *Vīramitrodaya*, p. 579 ; *Smṛtitattva II*, p. 166 ; *Vyavahāramayūkha*, p. 100 ; *Vibhāgasāra*, 4 2–11.]

NOTES

See II, 344 ; IV, 19.

This refers to cases where the wives have not been given any *Stridhana*.—(*Aparārka*, p. 730.)

'*Sarvāḥ*' is meant to include the father's step-mothers.—This text lays down the shares of the step-mother and of the step-grandmother.—(*Vyavahāramayūkha*, p. 100.)

In the case of partition made during the father's lifetime, everyone of his wives is to receive a share equal to that of the sons ; but in the case of partition made after the father's death, it is only the mothers of the sons who are to receive shares equal to the son's, while those that have no sons receive only food and clothing.—Such appears to be the implication of many legal digests.—But the author of the *Mitākṣarā* appears to hold the view that both sets of wives—those with sons as well as those without sons—receive shares equal to the sons. Such also is the view of the *Madanaratna*.—(*Vīramitrodaya*, p. 579.)

36. तैत्तिरीयसंहिता 6. 5.—82.] स्त्रियो निरिन्द्रिया अदायादीः ।

Women devoid of reproductive efficiency are not entitled to inheritance.—(*Taittirīya Samhitā*, 6. 5—82.)

37. मैत्रायणी संहिता 4. 6. 4.] पुमान्दायादः स्त्र्यदायादश्च ।

The male is the heir; the female is not the heir.—(*Maitrāyaṇī Samhitā*, 4. 6. 4.)

38. शतपथब्राह्मण 4. 4. 2—13.] ता हता निरष्टा नात्मानश्च नेशते न दायादस्य च नेशते ।

Women, being suppressed and discarded, are not mistresses of themselves, nor of any property.—(*Shatapatha Brāhmaṇa*, 4. 4. 2—13.)

NOTES

All this shows that women could not take any inheritance and they were not independent persons in the eye of the law.

39. बौधायन] निरिन्द्रिया अदाया हि स्त्रियः ।

Women devoid of reproductive efficiency are not entitled to inheritance.—(*Baudhāyana.*) [Quoted in *Aparārka*, p. 743; *Vivādachandra*, 21. 1—8.]

NOTES

This is to be explained as referring to such women as have sons. Because as a matter of fact, the single woman (sonless widow) is entitled to the performance of religious acts and acts of public utility, in which the wealth would be required to be employed.—(*Aparārka*, p. 743.)

'*Nirindriyāḥ*,' devoid of efficiency;—'*adāyāḥ*,' not entitled to any share of the inheritance.—(*Vivādachandra*, 21. 1—8.)

40. मनु 8. 416.] भार्या पुत्रश्च दासश्च त्रय एवाधनाः स्मृताः ।
महाभारत उद्योग 33. 64.] यत्ते समधिगच्छन्ति यस्यैते तस्य तद् धनम् ॥

The wife, the son and the slave have been declared to be without property; whatever they acquire belongs to the man to whom they belong. (*Manu*, 8. 416; *Mahābhārata*, *Udyoga*, 33. 64.)

NOTES

See I, 16; and II, 20.

41. मनु 9. 85.] यदि स्वाश्च पराश्चापि विन्देरन् योषितो द्विजाः ।
तासां वर्णक्रमेणैव ज्यैष्ठ्यं पूजा च वेश्म च ॥

When twice-born men wed women of their own as well as other castes, their seniority, honour and habitation shall be according to the order of their castes. –(*Manu*, 9. 85.) [Quoted in *Dāyabhāga*, p. 167 ; *Vīramitrodaya*, p. 639.]

NOTES

Their seniority shall depend upon '*the order of their castes*,' and not upon their age, nor upon the order of their marriage.—'*Honour*,' in the shape of presents of fruits and other things. The 'order of caste' is that the Brāhmaṇa wife comes first, then the Kṣattriya, then the Vaishya. -'*Habitation*,' the principal apartments, which belong to the Brāhmaṇa wife.—Among wives of the same caste, all this is governed by the order of their marriage.—(*Medhātithi.*)

'*Seniority*.'—title to perform such duties as are laid down for the seniormost wife.—'*Habitation*,' the best house. –(*Sarvajñanārāyaṇa.*)

'*Seniority*,'—*i.e.*, respect, preference in the matter of inheritance.—'*Honour*,' present of clothes, ornaments and such things.—'*Habitation*,' the chief apartment. –(*Kullūka.*)

The first honour is to be rendered to the Brāhmaṇa wife, and so on. The order of their marriage does not count.—(*Rāghavānanda.*)

Their seniority shall be in the order of their castes, not in the order of their marriage.—(*Nandana.*)

The wife of the same caste as the husband, even though junior in the order of marriage, is to be regarded as 'senior' ; as it is she alone who is entitled to be associated at sacrificial and other acts. - (*Dāyabhāga*, p. 167.)

The wife of the same caste, even though junior in age and in the order of marriage, is really 'senior,' in relation to the wives of different castes ; among the wives of the same caste, the most highly qualified is to be regarded as 'senior.' – (*Vīramitrodaya*, p. 639.)

42. याज्ञवल्क्य 2. 142.] अपुत्रा योषितश्चैषां भर्तव्याः साधुवृत्तयः ।
निर्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च ॥

Of these (*i.e.*, the impotent, the outcast and the rest who are excluded from inheritance), the sonless wives should be supported, if they are well-behaved ; those that misbehave, as also those that are inimical, should be turned out.—(*Yājñavalkya*, 2. 142.) [Quoted in *Vīramitrodaya*, p. 634.]

NOTES

Of those that are not misbehaved, if, on the strength of their *Strīdhana*, they are 'inimical'—too arrogantly independent,—they shall be turned out. The particle '*cha*' implies that this refers to only those who have their own '*Strīdhaṇa*.'—(*Vishvarūpa*.)

The married wives of these men, being sonless, are to be supported, if they are chaste; if they are misbehaved or are inimical to their brother-in-law and others, they shall be turned out of the house. Their daughters—even though born of an outcast,—shall be maintained and married.—(*Aparārka*.)

'*Of these*,'—*i.e.*, of the impotent and the rest—'*the sonless wives, if well-behaved*,'—*i.e.*, if they lead a chaste life,—'*should be supported*'; those that are misbehaved '*should be turned out*';—those that are 'inimical' should also be turned out; but if these latter are chaste, they have to be supported; maintenance is not to be denied to them merely on the ground of their being 'inimical.'—(*Mitāksarā*.)

Of the impotent and other persons, the wives—who had been married to them before their impotence or other disqualifications were known,—if chaste in their conduct, shall be supported. If they are unchaste,—or they are very inimical,—they shall be turned out of the house.—The particle '*cha*' includes the women addicted to drink and such other vices as to be turned out. The particle '*eva*' excludes their title to support.—(*Vīramitrodaya-Ṭīkā*.)

43. बृहन्मनु] अपुत्रा शयनं भर्तुः पालयन्ती व्रते स्थिता ।
परन्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत च ॥

The sonless widow alone shall offer the cake to her husband and take his entire share, if she is faithful to his bed and firm in her vows.—(*Bṛhat-Manu*.) [Quoted in *Aparārka*, p. 742; *Mitākṣarā*, pp. 726-727, 737; *Vivādaratnākara*, p. 589; *Vivādachintāmaṇi*, p. 236; *Smṛtichandrikā*, p. 675; *Parāsharamādhava*, p. 358; *Dāyabhāga*, p. 152; *Vīramitrodaya*, p. 624; *Dvaitaparishiṣta*, p. 41; *Vibhāgasāra*, 15. 2. 1; *Dāyanirṇaya*, 4. 2–8.]

NOTES

This text makes it clear that if a widow is desirous of being 'appointed' to bear children, she ceases to be entitled to inheritance; as in that case, she could not be said to be 'faithful to her husband's bed.'—The meaning is that the widow who fulfills the conditions here laid down receives her husband's entire property and offers the *Shrāddha* to him, even when his father or brother is there.—(*Aparārka*, p. 742.)

The title of the widow to her husband's entire property is set forth here—(*Mitākṣarā*, p. 726)—but only if she is self-controlled.—(*Ibid.*, p. 737.)

'*Vows*,'—*i.e.*, the observances and rules laid down for the widow.—(*Vivādaratnākara*, p. 589.)

If the widow fulfils the conditions here mentioned, she alone shall receive the husband's entire property and also offer the cake to him; and so long as she is there, the husband's brother and other relations shall not take the property or offer the cake.—'*Faithful to her husband's bed*,' *i.e.*, well controlled;—'*vrate sthitā*,'—even during her husband's lifetime keeping the fasts and the observances with his permission. This indicates that religious faith is also one of the qualifications necessary for entitling the widow to inheritance. Though by her marriage the woman became entitled to the property during the husband's lifetime, through the husband,—yet what is here asserted is that she acquires an independent ownership over the property.—(*Smṛtichandrikā*, p. 675.)

In the compound '*tatpiṇḍam*,' the pronoun '*tat*' refers to the husband; hence the meaning is that 'the wife obtains the entire share *of her husband*,' not her own share.—(*Dāyabhāga*, p. 152.)

There is no such sequence meant here as that 'she shall first obtain the property and *then* perform the *Shrāddha*'; for if such sequence were insisted upon, then the performance of the *Shrāddha* might be delayed, for which there would be no justification. The particle '*eva*' shows that even though the brother and other relatives of the husband may be there, yet it is the wife alone who is entitled to take the property and offer the *Shrāddha*.—(*Vīramitrodaya*, pp. 624-625.)

In the absence of the son, grandson and great-grandson, the chaste wife shall obtain the property. This refers to cases where the husband has been a divided coparcener.—(*Dvaitaparishiṣṭa*, p. 41.)

This implies that the unchaste widow is not entitled to the husband's property.—'*Entire share*,' his entire property, not only that much which may be needed for her livelihood. The wife meant here is the one belonging to the same caste as her husband.—(*Dāyanirṇaya*, 4. 2—8.)

44. हारीत] विधवा यौवनस्था चेन्नारी भवति कर्कशा ।
आयुषः क्षपणार्थं हि दातव्यं जीवनं [*v.l.*, स्त्रीधनं] सदा ॥

If the woman widowed in her youth becomes ill-mannered, living shall be provided for her for the maintenance of her life.—(*Hārīta*.) [Quoted in *Mitākṣarā*, p. 760; *Vivādachintāmaṇi*, p. 237; *Smṛtichandrikā*, p. 680; *Parāsharamādhava*, p. 359; *Vīramitrodaya*, p. 639; *Vyavahāramayūkha*, pp. 137, 140; *Vibhāgasāra*, 15. 2-9; *Dāyanirṇaya*, 21. 1—7.]

NOTES

This text is only meant to preclude the taking of the entire property by the widow suspected of unchastity; it is implied by this that if the widow is not suspected of being unchaste, she shall receive the entire property.—(*Mitākṣarā*, p. 760.)

According to *Bālarūpa*, this text refers to the wife of one who has been a 'reunited' coparcener. For if the husband dies before division, there could not have been anything that could be called his 'share.' The widow herself cannot be regarded as the person receiving the share that would have been her husband's (after partition); as there are no texts to this effect; specially as all the texts like the present one can be taken as referring to divided property.—(*Vivādachintāmaṇi*, p. 237.)

This lays down what is to be done in cases where the widow is suspected of being unchaste.—'*Karkashā*,' hard-hearted, capable of violent crimes, *i.e.*, who is believed to be unchaste.—(*Smṛtichandrikā*, p. 680.)

This refers to the case of widows suspected of immorality—(*Parāsharamādhava*, p. 359.)

Hārīta has here prohibited the taking of the entire property by the widow suspected of misconduct. This same text implies that if the widow is not suspected of misconduct, she shall receive her husband's entire property.—(*Vīramitrodaya*, p, 639.)

The sense is that the widow shall inherit her husband's property only if she is chaste,—not if she is unchaste.—(*Vyavahāramayūkha*, p. 137.)—If the widow is suspected of unchastity, she shall receive bare maintenance.—(*Ibid.*, p. 340.)

Others have declared that this refers to the wife of a reunited coparcener. It has been already pointed out that the widow of a childless undivided member of a joint family has no share in the property; and in the Mahābhārata it has been declared that 'the only interest that the wife has in her property is that she can enjoy it,'—and again that 'women shall not make any disposal of their husband's property,' where 'disposal' means freely giving away, selling and so forth.—(*Vibhāgasāra*, 15. 2—9.)

45. नारद] आढकांस्तु चतुर्विंशत् चत्वारिंशत् पणांस्तथा ।
प्रतिसंवत्सरं साध्वी लभेत मृतभर्तृका ॥

The chaste widow shall receive twenty-four *Āḍhakas* (of grains) and twenty-four *Paṇas* (in cash), annually.—(*Nārada.*) [Quoted in *Smṛtichandrikā*, p. 678.]

NOTES

'*Āḍhaka*' is a measure consisting of 192 seers of grain.—'*Paṇa*' stands for the *Kārṣapaṇa*, which, in some countries, stands for the eightieth part of the current *Niṣka* (gold coin); hence in countries where the *Paṇa* is not obtainable, the eightieth part of the *Niṣka* is to be given.—(*Smṛtichandrikā*, p. 678.)

46. स्मृत्यन्तर] क्रयक्रीता तु या नारी न सा पत्न्यभिधीयते ।
न सा दैवे न सा पित्र्ये दासीं तां कवयो विदुः ॥

The woman that has been bought is not called a *wife*; she has no standing in any rites performed either in honour of the gods or in that of the fathers; the wise men regard her as a slave.—(*Smṛtyantara.*) [Quoted in *Smṛtichandrikā*, p. 674; *Vīramitrodaya*, p. 624.]

NOTES

'*She is regarded as a slave*'—This is added with a view to show that such a woman serves only a temporal purpose—what is meant therefore is that what entitles a woman to inherit her husband's property is her capacity to assist in the performance of rites in honour of *Pitṛs* and deities.—(*Smṛtichandrikā*, p. 674.)

What is meant by the assertion that 'she is regarded as a slave' is that she is not entitled to be associated in religious acts;—not that she is to be treated as a slave.—(*Vīramitrodaya*, p. 624.)

47. याज्ञवल्क्य 1. 70.] हृताधिकारां मलिनां पिण्डमात्रोपजीविनीम् ।
परिभूतामधःशय्यां वासयेद् व्यभिचारिणीम् ॥

If the widow is unchaste, she should be deprived of her rights, let to remain dirty, living on a mere morsel of food, despised and sleeping on the ground.—(*Yājñavalkya*, 1. 70.) [Quoted in *Vīramitrodaya*, p. 640.]

48. नारद] यावत्यो विधवाः साध्व्यो ज्येष्ठेन श्वशुरेण वा ।
गोत्रजेनापि वाऽन्येन भर्तव्याऽऽच्छादनाशनैः ॥

All the widows who are chaste should be maintained with food and clothing, by the elder brother-in-law or the father-in-law or by any other *sagotrā*.—(*Nārada.*) [Quoted in *Smṛtichandrikā*, p. 678; *Vīramitrodaya*, p. 655.]

NOTES

'*Who has inherited the property of the deceased*'—this should be the qualification of the father-in-law and other persons mentioned; as the duty of maintaining the widow is always contingent upon the inheriting of the property.—(*Smṛtichandrikā*, p. 678.)

'*Who has taken the property of their husband,*'—this qualification has to be added to every one of the persons mentioned; as the providing of the maintenance would always be contingent upon receiving the property. The qualification '*chaste*' implies that in all cases it is only the chaste widow who is to be supported; while the unchaste widow is not to receive even the maintenance.—(*Vīramitrodaya*, p. 655.)

49. नारद 13. 28-29.] मृते भर्तर्यपुत्रायाः पतिपक्षः प्रभुः स्त्रियाः ।
विनियोगेऽर्थरक्षासु भरणे च स ईश्वरः ॥
परिक्षीणे पतिकुले निर्मनुष्ये निराश्रये ।
तत्सपिण्डेषु चासत्सु पितृपक्षः प्रभुः स्त्रियाः ॥

On the death of her husband, the relations of her husband shall be the guardians of the sonless widow ; they shall have full authority to control her, to administer her property and to maintain her. If the husband's family is extinct, or contains no males, or when it is reduced to poverty, and no *Sapiṇḍa* is left, her father's relations shall be the guardian of the woman.—(*Nārada*, 13. 28-29.) [Quoted in *Dāyabhāga*, pp. 173-174 ; *Vīramitrodaya*, p. 628.]

NOTES

'*Viniyoga*,' employment of her wealth in charity and so forth.—In the absence of the husband and the son, the woman shall be dependent upon the husband's relations.—(*Dāyabhāga*, p. 174.)

Taking the words in their literal sense, some people have held that in regard to the husband's property, the widow has no right to make gifts or sell. On this matter, the following considerations are necessary : Does this mean that if the widow does make such gifts or sales, they would be invalid ? This would not be right ; because there are several texts of Manu and others which have declared the widow's right to inherit her husband's entire property ; so that her ownership over the property being established, it naturally precludes the possibility of her gifts and sales being invalid. According to what Jīmūtavāhana has said on this subject,—to the effect that when several texts have definitely asserted the widow's right to inherit the husband's entire property and her absolute ownership over it, which means that she can do what she likes with it, this right cannot be set aside by even hundreds of texts to the contrary,—the present text means that what the denial of the widow's rights to give or sell means is only that she is not to do the selling or the giving either through sheer wickedness or with a view to injure the interests of the reversioners, and that if she does it, she incurs sin ; but when she employs the wealth in making gifts with a religious motive, and has to sell or mortgage the property,—there she does not incur even that sin.—Nor will it be right to argue that—" in view of the texts declaring that the widow is only to enjoy the property and that the reversioners shall receive the property after her death, the widow can have no right to sell or give away her husband's property ; just as she has no such right in regard to her husband's share in a joint property " ;—it will not be right to argue thus, because there is a great difference between property over which one's ownership is shared by others and that over which one's ownership is absolutely one's own.—If the widow had no right to make gifts, etc., out of the property, how could she fulfil the obligations of performing religious and

sacrificial and charitable acts ?—The texts that speak of the coparceners or reversioners receiving the property after the widow's death, all that they mean is that after her the property shall go to the daughter and other heirs enumerated (in Yājñavalkya's text) . . . . As a matter of fact, when a man dies as the absolute owner of a property, that property should go to his near relatives; and the wife being the nearest among them, when once her ownership has come about, how could there be any chance of the daughter or any one else coming in ?—(*Vīramitrodaya*, pp. 628–630.)

50. नारद 13. 25—27.] भ्रातृणामप्रजाः . . . .
आच्छिन्द्युरितरासु तत् ।

(A) If among (reunited) brothers any one should die, or become a wandering mendicant, the others shall divide his property, except the *Strīdhana*.—(B) They shall make provision for his wives, till their death in case they remain faithful to the bed of their husband ; should the wives be otherwise, they shall withdraw the provision.—(*Nārada*, 13. 25—27.)

NOTES

See III, 11 ; II, 362 ; III, 89.

51. शङ्ख] भ्रातृभार्याणां स्नुषाणां च न्यायतः प्रवृत्तानामनपत्यानां
पिण्डमात्रं गुरुर्दद्यात् जीर्णानि वासांस्यविकृतानि ।

To the brothers' wives and the sons' wives who are behaving in the proper manner, the elder shall give only food and such old clothes as may not be torn.—(*Shankha*.) [Quoted in *Vivādachintāmaṇi*, p. 237 ; *Dāyanirṇaya*, 21. 1–6.]

NOTES

This refers to cases where the husband has not been divided.—(*Vivādachintāmaṇi*, p. 237.)

If the brother's widow is expected to be 'carrying,' proper share should be allotted for the expected son ; if the child born is a son, the share goes to him ; if it is not a son then the share shall be divided among the widow's brothers-in-law ; and she is to receive only food and clothing.—(*Dāyanirṇaya*, 21. 1–5.)

52. मनु 11. 188.] एवमेव विधिं कुर्यात् योषित्सु पतितास्वपि ।
वस्त्रान्नपानं [*v.l.*, मासां] देयं तु वसेयुश्च गृहान्तिके ॥

This same method is to be adopted also in the case of female outcasts ; but clothing, food and drink shall be supplied to them and they shall live close to the house.—(*Manu*, 11. 188.) [Quoted in *Smṛtichandrikā*, p. 640.]

NOTES

Even in the case of such female outcasts as have not performed the expiation, and to whom 'water' has been offered as to the dead, food and clothing shall be supplied. Inasmuch as the text uses the root 'to give,' what is meant is that she is to receive just enough food and clothing to keep her body, and she shall not be supplied with any articles of luxury.—'*Drink*' stands for *water*; as water could be got by the woman by herself in any quantities, what is meant is that whenever water is supplied to her, it shall be done in an affectionate manner.—Food and clothing should be of inferior quality. Says Yājñavalkya (1. 70)—'One should deprive the unchaste woman of her rights, let her remain dirty, living on a mere morsel of food, despised and sleeping on the ground.'—The conditions that render a woman, 'outcast' are the same as those in the case of men..... Says Yājñavalkya (3. 298)—'Intercourse with inferior men, abortion, and injuring the husband are to be regarded as acts that render women *outcasts*.'—'*They shall live close to the house*':—what is meant is that they shall be turned out of the main house and allowed to live in a separate hut.—Some people hold that lodging close to the house is to be given to only those who are performing the expiation, not to others.—But this is not right; for what is really meant is that the supplying of food and clothing would be easier if she lived close by: while during the expiation itself she should be living on alms or milk or performing the *Chāndrāyaṇa* and other penances.—From all this it follows that food and clothing, etc., have to be supplied also to that female outcast who, either through incapacity or on account of some other cause, is not in a position to perform the expiation.—(*Medhātithi*.)

Dwelling near the house is intended to keep her from further misbehaviour.—(*Sarvajñanārāyaṇa*.)

The husband and others shall give to the woman food and clothing and also a hut near the house to live in.—(*Kullūka*.)

This is for such women as do not wish to perform the expiation.—(*Rāghavānanda*.)

This refers to provision for maintenance made by the husband—(*Smṛtichandrikā*, p. 680.)

This is meant for the husband.—(*Viramitrodaya*, p. 640.)

53. प्रजापति] आढकं भर्तृहीनाया दद्यादामरणान्तिकम् ।
स्मृत्यन्तर] अन्नार्थं तण्डुलप्रस्थं अपराह्णे तु सेन्धनम् ॥

To the widow one should give a measure of food grain.—(*Prajāpati*.)

One should give her, in the afternoon, a seer of rice along with fuel.—(*Smṛtyantara*.) [Quoted in *Parāsharamādhava*, p. 359.]

NOTES

The meaning of these texts is the same as that of Hārīta's text—'*Vidhavā yauvanasthā, etc.*' (see above, Sec. 44).

54. नारद 13. 52.] राजा धर्मपरायणः
तत्स्त्रीणां जीवनं दद्यात् ।

The righteous king must provide maintenance for the women of the man who has left no heir.—(*Nārada*, 13. 52.) [Quoted in *Dāyabhāga*, p. 168 ; *Vyavahāramayūkha*, p. 139.]

NOTES

The maintenance spoken of here is for those women who were not the married wives of the deceased : the married wives being entitled to inherit the entire property of the husband.—(*Dāyabhāga*, p. 168.)

This refers to the 'kept' women ; as the word '*patnī*' (wife) has not been used.—(*Vyavahāramayūkha*, p. 139.)

55. कात्यायन] अपचार [*v.l.*, कार] क्रियायुक्ता निर्लज्जा चार्थनाशिका ।
व्यभिचाररता या च स्त्री धनं न च सार्हति ॥

One addicted to evil ways, one who is immodest, one prone to waste wealth, one who is unchaste,—such women do not deserve any property.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, pp. 659, 680 ; *Parāsharamādhava*, p. 357 ; *Vyavahāramayūkha*, pp. 140, 157 ; *Aparārka*, p. 756 ; *Vivādaratnākara*, p. 514 ; *Vivādachintāmaṇi*, p. 221 ; *Vivādachandra*, 22. 2—4 ; *Vīramitrodaya*, pp. 655, 692 ; *Smṛtitattva II*, p. 184 ; *Vibhāgasāra*, 11. 1—5 ; *Dāyanirṇaya*, 5. 2-3.]

NOTES

'*Property*,'—*i.e.*, that portion of the property which has been assigned for her maintenance, or arable land assigned for the purpose,—is not deserved by the four kinds of women mentioned. In fact 'property' stands for food and clothing.—(*Smṛtichandrikā*, p. 680.)—'*Na arhati*,' is not entitled to make use of.—(*Ibid.*, p. 659.)

'*Property*,'—she does not deserve to receive the arable land assigned for her maintenance.—(*Parāsharamādhava*, p 357.)

The unchaste woman does not deserve to have any *Strīdhana*.—(*Vivādachandra*, 22. 2—4.)

What is meant is that she shall *not* be given even what may suffice for her maintenance ; and that even if it has been given to her, it should be taken away.—(*Vīramitrodaya*, p. 655)—'*Apakārakriyāyuktā*,' always intent upon injuring her husband's interests.—(*Ibid.*, p. 692.)

The *Strīdhana* of such a woman should be taken away by her relations.—(*Vibhāgasāra*, 11. 1—9.)

Section 3

IN THE ABSENCE OF THE WIFE THE DAUGHTER IS THE HEIR

56. याज्ञ II. 137.] पत्नी दुहितरः etc.

NOTES

See III, 2.

57. नारद] पुत्राभावे च दुहिता तुल्यसन्तानदर्शनात् ।
पुत्रश्च दुहिता चोभे पितुः सन्तानकारिके ॥

In the absence of the son, the daughter (shall inherit the property), since both are equally offsprings; the son and the daughter both help to propagate the line of the father.—(*Nārada.*) [Quoted in *Aparārka*, p. 743; *Vivādaratnākara*, p. 591; *Vivādachintāmaṇi*, p. 238; *Smṛtichandrikā*, p. 683; *Dāyabhāga*, pp. 175, 183; *Vīramitrodaya*, p. 657; *Dvaitaparishiṣṭa*, p. 41; *Vivādachandra*, 25. 2. 2; *Vibhāgasāra*, 16. 1. 1.]

NOTES

If the wife is not there, those daughters shall inherit the father's property who belong to the same caste as the father.—(*Aparārka*, p. 743.)

Here Nārada declares the right of the daughter, in the absence of the wife.—(*Vivādaratnākara*, p. 591.)

Both help to propagate the line which is conducive to the father's welfare. What is meant is that so far as the help rendered to the grandfather is concerned, the son's son and the daughter's son are equal. This equality does not extend to the clearing of the grandfather's debt; as that devolves only upon the son and the son's son.—(*Smṛtichandrikā*, p. 683.)

The '*offspring*' meant here is one who offers the funeral cake; an offspring that does not offer the funeral cake, according no help, is as good as the offspring of another person; and it is the daughter's son who offers the cake, not the son of the daughter's son, nor the daughter's daughter. Thus then, that daughter is entitled to inherit the father's property who has a son, or who expects to have sons. One who is barren, or a widow, or a mother of daughters alone, would not be so entitled.—We must accept this view of *Dīkṣita*.—(*Dāyabhāga*, p. 175.) —In the compound '*putrābhāve*,' the term '*putra*' stands for *the son and the wife*.—(*Ibid.*, p. 183.)

Bālambhaṭṭi (*Mitākṣarā*, p. 767)—also declares that it is the daughter with a son who is entitled to inherit the father's property.

The son and the daughter both help to propagate the father's line, through their sons (both of whom are the said father's grandsons); and thus the character of being 'the propagator of the line' belonging to both, the daughter is as much entitled to inherit the property as the son. Though the *son's son* and the *daughter's son* are not exactly alike in form yet the purpose that they serve for the grandfather is the same.—(*Vīramitrodaya*, p. 657.)

Here we find it laid down that the property goes to the daughter.—(*Vivādachandra*, 25. 2. 2.)

58. बृहस्पति 25. 56.] अङ्गादङ्गात् सम्भवति पुत्रवद् दुहिता नृणाम् ।
तस्याः पितृधनं त्वन्यः कथं गृह्णीत मानवः
[*v.l.*, बान्धवाः] ॥

The daughter, like the son, springs from each limb of the man; how then should any other person inherit her father's property?—(*Bṛhaspati*, 25. 56.) [Quoted in *Aparārka*, p. 743; *Mitākṣarā*, p. 766; *Vivādaratnākara*, p. 491; *Vivādachintāmaṇi*, p. 238; *Smṛtichandrikā*, p. 682; *Vīramitrodaya*, p. 656; *Dāyabhāga*, p. 178; *Vibhāgasāra*, 16. 1. 1; *Dāyanirṇaya*, 6. 1—4.]

NOTES

All this does not refer to the 'appointed daughter' alone; because it having been declared that the appointed daughter is "like the legitimate son," the title to the father's property is already included in the title of the 'son,' and yet Manu has declared the title of the 'daughter' separately.—(*Vivādachintāmaṇi*, p. 239.)

The father's body is as much reproduced in the daughter as in the son.—'*Other person*,'—*i. e.*, any one other than the son and the wife of the deceased.

59. मनु 9. 130. नारद 13. 49.] यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा ।
तस्यामात्मनि तिष्ठन्त्यां कथमन्यो हरेद्धनम् ॥

The son is as one's own self, and the daughter is equal to the son; so long as she is there as the (father's) own self, how can any one else take the property?—(*Manu*, 9.130; *Nārada*, 13. 49.) [Quoted in *Aparārka*, p. 743; *Vivādaratnākara*, p. 591; *Vivādachintāmaṇi*, p. 238; *Smṛtichandrikā*, pp. 683, 684; *Dāyabhāga*, p. 175; *Vīramitrodaya*, p. 656; *Vyavahāramayūkha*, p. 141; *Dāyanirṇaya*, 1. 5.]

NOTES

[In connection with Appointed Daughter] it has been said that the father shall declare—'The son that is born of her shall be mine,' and a man's son inherits his property; so that at the time that the father dies, if the daughter

has got no son, it would seem that she cannot inherit her father's property; it is in view of this that the present text lays down that she shall inherit it.—'*Tasyāmātmani tiṣṭhantyām*,'—while the father's own self is there, in the shape of the daughter; or so long as the daughter is there in her own real character—of being 'appointed' to provide a 'son' for her father.—Though the text uses the general term 'daughter,' yet from the context it is clear that the 'appointed daughter' is clearly meant.—(*Medhātithi*.)

That same appointed daughter, none else, shall inherit the property of the sonless deceased.—(*Sarvajñanārāyaṇa*.)

The son takes the place of the father himself;—the daughter is equal to the son;—hence so long as the appointed daughter, who is the very self of the father, is there,—how can any one else, other than the appointed daughter, inherit the property of her deceased sonless father?—(*Kullūka*.)

The daughter is the man's self; hence the appointed daughter is entitled to receive the property of her sonless father; and her son takes the place of the man's 'son's son.'—'*Any one else*,' an agnate.—(*Rāghavānanda*.)

The 'daughter' here is the appointed daughter.—'*Atmani*,' she who is the very self of the father.—'*Any one else*,' who is not the self of the deceased, such as his brother and the like.—(*Nandana*.)

'*Ātmani*,' equal to the son who is equal to the man's own self. When the deceased has left no son or widow, his property goes to his daughter.—(*Smṛtichandrikā*, p. 683.)—The father cannot come before the daughter; because though the father is more helpful to the deceased spiritually, yet the daughter is more nearly related physically; hence the daughter comes before the father.—(*Ibid*., p. 684.)

In the absence of the wife, the daughters inherit the property of a man who being divided and not united, has died sonless.—(*Vīramitrodaya*.)

In the absence of the wife, the living daughter shall receive the property.—(*Vivādaratnākara*, p. 591.)

In the absence of the wife, the property goes to the daughter.—(*Vivādachintāmaṇi*, p. 238.)

In the absence of the wife, the daughter shall inherit the property. If there are more daughters than one, they shall divide the property among themselves.—(*Vyavahāramayūkha*, p. 141.)

60. बृहस्पति 25. 55.] भर्तुर्धनहरी पत्नी तां विना दुहिता स्मृता ।

The wife is to inherit the property of the husband; in her absence the daughter.—(*Bṛhaspati*, 25. 55.) [Quoted in *Mitākṣarā*, p. 766; *Smṛtichandrikā*, p. 682.]

61. ?] अपुत्रस्य च या कन्या धर्मतः साऽपि पुत्रवत् ।

The daughter of the sonless man is, in law, as good as the son.—(?) [Quoted in *Vivādachandra*, 20. 2–8.]

NOTES

The meaning is that the wealth of the father, who was an undivided coparcener, shall be made over to his daughter ; if there is nothing that belonged to the undivided father, his coparceners shall give to his daughter something out of their own shares.—(*Vivādachandra*, 20. 2—8.)

62. आपस्तम्ब 2. 6. 14 4.] तद्दुहिता वा ।

Or his daughter (shall take the inheritance).—(*Āpastamba*, 2. 6. 14. 4.)

63. पराशर 6. 1—6.] अपुत्रस्य मृतस्य कुमारी रिक्थं गृह्णीयात् ।
तदभावे चोढा ।

If a man dies sonless, his maiden daughter shall receive his property ; if there is no maiden daughter, then the married daughter.—(*Parāshara.*) [Quoted in *Vivādachintāmaṇi*, p. 239; *Smṛtitattva II*, p. 191 ; *Dāyanirṇaya*, 6. 1—6.]

NOTES

Where the man has left one unmarried and one married daughter, the property shall go to the former.—(*Smṛtitattva II*, p. 191.)

64. देवल] कन्याभ्यश्च पितुर्द्रव्यात् देयं वैवाहिकं वसु ।
अपुत्रिकस्य कन्या स्वा धर्मजा पुत्रवद्धरेत् ॥

To the (unmarried) daughters should be given that much of the father's wealth as would be required for their marriage. If a man dies sonless, his property shall be taken by his legitimate (unmarried) daughter of the same caste as himself,—in the same way as by a son.—(*Devala.*) [Quoted in *Dāyabhāga*, pp. 175, 176 ; *Vibhāgasāra*, 6. 2-3 ; *Dāyanirṇaya*, 6. 1—7.]

NOTES

See II, 335.

The term '*putrikā*' (in '*aputrikasya*') stands for the *son.*— '*Svā*,' belonging to the same caste as the father.—'*Dharmajā*,'—legitimate. —(*Dāyabhāga.*)

The term '*putrikā*' stands for the son (grandson, great-grandson) ;— '*Dharmajā*,' 'legitimate, body-born.'—'*Svā*,' belonging to the same caste as the father.—(*Dāyanirṇaya*, 6. 1—7.)

65. संग्रहकार] तादृक्पत्न्या अभावेऽपि पुत्रिका धनमर्हति ।

In the absence of the said wife, the daughter is entitled to receive the property.—(*Sangrahakāra.*) [Quoted in *Smṛtichandrikā*, p. 656.]

66. कात्यायन] पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणी ।
तदभावे तु दुहिता यद्यनूढाऽप्रतिष्ठिता ॥

The wife who is chaste shall inherit the husband's property ; in her absence, the daughter, if she is unmarried and unsettled.—(*Kātyāyana.*)

NOTES

See III, 19.

67. गौतम 25. 22.] स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च ॥

The *Strīdhana* goes to the daughters, who are unmarried and unsettled.—(*Gautama*, 25. 22.) [Quoted in *Mitākṣarā*, p. 768 ; *Vibhāgasāra*, 11. 2-3.]

NOTES

'*Unsettled*,'—those who have no means of maintenance ; these are entitled to inherit the mother's property.—(*Vibhāgasāra*, 11. 2-3.)

Where one daughter is '*settled*,' *i.e.*, rich (*Bālambhaṭṭī*)—and the other unsettled, the property goes to the latter. The assertion (made in regard to the mother's *Strīdhana*) applies to the father's property also.—This should not be taken as referring to the 'appointed daughter' ; as the latter would be entitled to inherit by virtue of her being 'equal to the legitimate son.'—(*Mitākṣarā*, p. 768.)

68. बृहस्पति 25. 57.] सदृशी सदृशेनोढा साध्वी [*v.l.*, भर्तृ] शुश्रूषणे रता ।
कृताऽकृता वाऽपुत्रस्य पितुर्धनहरी भवेत् [*v.l.*, तु सा] ॥

A daughter equal in caste (to the father) and married to a man of the same caste, gentle and devoted to service (of her husband), shall inherit her sonless father's property,—whether she may have been "appointed" or not.—(*Bṛhaspati*, 25. 57.) [Quoted in *Aparārka*, p. 743 ; *Vivādaratnākara*, p. 591 ; *Vivādachintāmaṇi*, p. 238 ; *Smṛtichandrikā*,

p. 687 ; *Dāyabhāga*, p. 176 ; *Vīramitrodaya*, p. 659 ; *Dvaitaparishiṣṭa*, p. 41 ; *Vibhāgasāra*, 16. 1—3 ; *Dāyanirṇaya*, 6. 1—8.]

NOTES

'*Sadṛshī*,'—belonging to the same caste. This implies that the daughter belonging to a different caste is not entitled to inherit the father's property. '*Kṛtā*,' *appointed*. The 'appointed daughter' is mentioned only by way of an example ; a man having an 'appointed daughter' cannot be called 'sonless' ; hence the present text could not be taken as laying down the appointed daughter's title to inheritance.—(*Aparārka*, pp. 743-744.)

'*Sadṛshī*,'—of the same caste as her father. The first four qualifications mentioned here refer to the inheritance of daughters after the death of the wife . . . . The meaning is as follows :—If the father is without a legitimate son, both kinds of appointed daughter shall inherit his property *before* (in preference to) the wife ; but the ordinary daughter, endowed with the four qualities, inherits it only *after* the wife. Thus after the wife, if there are several daughters, some unsettled and some unmarried, it is the unmarried daughter that inherits the property ; as it is she who had to be maintained by the father. If there is no unmarried daughter, then the property goes to that daughter who is unsettled (poor) ; because even though her maintenance is the duty of her husband, yet she remains unsettled by reason of her husband's inability to maintain her.—If there is no unsettled daughter, then the property goes to the settled daughter.—If there is no settled daughter, it goes to the daughter's son.—(*Smṛtichandrikā*, p. 687.)

'*Sadṛshī*,'—of the same caste as her father ;—'*married to a man of equal caste*,'—this has been added with a view to exclude the daughter married to a man belonging to a higher or a lower caste ; as the son of such a daughter is not entitled to offer *Shrāddha* to his mother's father ; while the daughter married to a man of the same caste benefits her father through her son.—As for the son of the appointed daughter, he is as helpful to his mother's father as the latter's son, and hence his title to inheritance is equal to the son's. As for the daughter other than the 'appointed' one, the benefit conferred by her upon her father is indirect, through her son ; and hence her title comes in only after that of the son and the wife.—The qualification 'devoted to the service of her husband' indicates that she should not be a widow, which implies that she should be one who is expected to bear sons.—The addition of so many qualifications implies that the daughter is not entitled to inherit, by virtue of being a daughter, she does so by virtue of being a daughter possessed of all these qualifications.—(*Dāyabhāga*, p. 177.)

'*Sadṛshī*,'—of the same caste as the father ;—'*Sadṛshēna*,'—to one belonging to the same caste as herself ; this is meant to exclude the connection with higher and lower castes ; because the sons born of such connection are precluded from offering *Shrāddha* to the maternal grandfather. Such is the view of *Jīmūtavāhana*. This however cannot be accepted ; because the term '*ūḍhā*,' 'married,' itself serves to exclude the connection of lower caste ;

as a girl wedded to a man of a lower caste cannot be regarded as 'married.' Hence the qualification must be taken as excluding only the higher caste.—(*Vīramitrodaya*, p. 659.)

This lays down what sort of daughter is entitled to inherit the father's property.—(*Dvaitaparishiṣṭa*, p. 41.)

This points out what sort of unmarried daughter inherits the property of her sonless father.—All this does not refer to the case of the appointed daughter. Because she is 'equal to the son' and as such entitled to inherit the property of the father directly; so that it would be only in her absence that the property could go to her mother.—(*Vibhāgasāra*, 16. 1—4.)

The law on this point is thus summed up in *Dāyanirṇaya*, (6. 1—9) :—Among daughters, first comes the *unmarried daughter*, who possesses an inherent right over her father's property ;—then comes the *married daughter* who has no son ;—then the daughter who has, or expects, a son ;—the property cannot go to the husband or other relatives of the daughter.—According to *Dīkṣita*, it is only the daughter having or expecting a son who is entitled to the inheritance,—not the childless, widowed or the barren daughter,—because there is no chance of the father receiving offerings through the latter.—But according to Mishra, this latter also is entitled to the inheritance when there is no daughter with a son.

69. नारद 13. 27.] स्यात्तु चेद्दुहिता तस्य [*v.l.*, तस्याः] पित्र्योंशो भरणे मतः ।
आसंस्काराद्धरेद् भागं परतो बिभृयात् पतिः ॥

If the man [*v.l.*, the woman] has left a daughter, her father's share is held to be for her maintenance; till her marriage she shall have the share (of her father); after that her husband shall maintain her.—(*Nārada*, 13. 27.) [Quoted in *Smṛtichandrikā*, p. 685; *Vīramitrodaya*, p. 659; *Medhātithi* on *Manu*, 9. 118.]

NOTES

For Medhātithi's note on this text, see II, 326.

This refers to the daughter of a sonless widow. The meaning is as follows: If the sonless widow has got a daughter, then her father's share shall go towards her maintenance; therefore till her marriage, the daughter shall receive her father's share only for her maintenance,—and not for making any use of it she likes.—We do not find any authority for regarding the texts declaring the daughter's title to inheritance of the father's property as referring to the appointed daughter; they must refer to daughters in general.—(*Smṛitchandrikā*, p. 685.)

* '*Tasyāḥ*' (*v.l.*, for '*tasya*') refers to the sonless widow. If such a widow has a daughter 'she shall receive her father's share for her maintenance; therefore till her marriage she shall take the father's share for her maintenance only; and after her marriage, her husband shall maintain her. Hence till her marriage she shall keep for herself whatever may be left over of her father's property after her maintenance.—(*Vīramitrodaya*, p. 659.)

70. मनु 9. 135.] अपुत्रायां मृतायां तु पुत्रिकायां कथंचन ।
धनं तत् पुत्रिकाभर्ता हरेतैवाविचारयन् ॥

If the appointed daughter happen to die without a son, the husband of that appointed daughter shall, without hesitation, take that property.—(*Manu*, 9. 135.) [Quoted in *Dāyabhāga*, p. 179.]

NOTES

See also IV, 71.

There might be an idea that the husband of the appointed daughter who has had no issue has nothing to do with the property inherited by his wife; hence the present text lays down his connection with it.—(*Medhātithi.*)

'*Dhanam*,'—the property of the living or dead father obtained by her.—(*Sarvajñanārāyaṇa.*)

The appointed daughter is 'equal to the son,'—and according to law, the property of a son dying without a wife or a son, goes to his father; it is with a view to preclude this contingency in the case of the 'appointed daughter.'—(*Kullūka.*)

'*Without hesitation*,'—not paying any heed to the notion that the property of the 'appointed daughter' in question may go to her father, just as the property of the appointed daughter's son goes to the said daughter's father. The sense is that it is only the son of the appointed daughter—and not her property,—that is to benefit the daughter's father.—(*Rāghavānanda.*)

The husband, and not her uncle and others, shall receive her property.—(*Nandana.*)

This refers to cases where the appointed daughter had got but lost a son.—(*Dāyabhāga*, p. 179.)

71. पैठीनसि] प्रेतायां पुत्रिकायां तु न भर्ता द्रव्यमर्हति ।
अपुत्रायां कुमार्यां वा स्वस्रा ग्राह्यं तदन्यया ॥

If an appointed daughter dies sonless, her husband does not receive her property; it should go to her unmarried sister or to another.—(*Paiṭhīnasi.*) [Quoted in *Dāyabhāga*, pp. 178-179.]

NOTES

The property shall be taken by her unmarried sister, or by another sister who may have a son or may be expected to have a son.—Thus in the matter of a woman's property, the claims of non-women are precluded.—(*Dāyabhāga*, p. 179.)

72. शङ्खलिखित] प्रेतायाः पुत्रिकायास्तु न भर्ता द्रव्यमर्हति ।

On the death of the appointed daughter her husband is not entitled to inherit her property.—(*Shaṅkha-Likhita.*) [Quoted in *Dāyabhāga*, p. 178.]

Section 4 (a)

DAUGHTER'S SON AS HEIR

73. मनु 9. 132-133.] दौहित्रो ह्यखिलं रिक्थमपुत्रस्य पितुर्हरेत् [*v.l.*, हरेद्यदि]
स एव दद्याद् द्वौ पिण्डौ पित्रे मातामहाय च ॥
पौत्रदौहित्रयोर्लोके विशेषो नास्ति धर्मतः ।
तयोर्हि मातापितरौ सम्भूतौ तस्य देहतः ॥

The daughter's son shall inherit [or *v.l.*, if the daughter's son inherit] the entire property of the sonless father, he shall also offer two cakes—to his father and to his maternal grandfather.—In this world, between the son's son and the daughter's son, there is no difference in law; as the father and mother of these were born of his own body.—(*Manu*, 9. 132-133.) [Quoted in *Vivādachintāmaṇi*, p. 239; *Dāyabhāga*, p. 180; *Vīramitrodaya*, p. 662; *Vibhāgasāra*, 16. 1—6; *Dāyanirṇaya*, 6. 2—8.]

NOTES

That the son of the appointed daughter shall inherit the property of the father having been already laid down in the foregoing texts, the present text has been explained by some people as laying down the necessity of the said daughter's son offering the two cakes; and according to these people, the reading is '*hared yadi*' for '*piturharēt*'; the meaning being—'if the son of the son of the appointed daughter inherits the property . . . . he shall offer two cakes.'—According to this view, the offering of the cakes would be incumbent only in the event of the man inheriting the entire property; so that he need not offer the cakes in the event of his receiving only 'an equal share,' as laid down in *Manu*, 9. 134.—This explanation however cannot be right; what is meant is that 'he shall inherit the property of the sonless father'; '*Aputrasya pitur harēt*' being the long-accepted reading. The term 'father' here stands for the *progenitor*, and not for the maternal grandfather; hence what is meant is that—'if the husband of the appointed daughter has no son of any other wife, but has one from the said appointed daughter, then this same son shall be the son and heir of his own father as also of his mother's father'; if however the progenitor has sons from his other wives, then the son born of the appointed daughter shall neither inherit the property of, nor offer cakes to, him;—even though he may be born of a mother belonging to the same caste as his father. The relation of 'progeny and progenitor' is different from that of 'father and son'; even though the 'father' of the *Kṣetraja* and some other kinds of sons are not their 'progenitors,' yet they are regarded as having those as

their 'issue'; while the 'fathers' of the purchased and abandoned sons, even though their actual 'progenitors,' are not regarded as having them as their 'issue' . . . . The conclusion therefore should be as follows: In a case where the husband of the appointed daughter has no other sons, the son of that appointed daughter shall inherit his entire property and also offer funeral cakes to him as well as to his mother's father;—if however the father has sons from other wives, then the son of the appointed daughter shall not offer the cake to him; he shall offer it to his mother's father only.—The same principle applies to the case of the maternal grandfather also; *i.e.*, the appointed daughter's son shall offer the cake to him if he inherits his property. As a matter of fact the injunction that 'he shall offer the cakes when he inherits the entire property' does not necessarily imply that there should be no offering in other cases.—(*Medhātithi.*)

The son of the appointed daughter is to receive the property, not only of his mother's father, but also of his own father (progenitor), his mother's husband,—if the latter has no other son.—The term '*daughter's son*' here stands for the son of the appointed daughter; he shall inherit the property of his progenitor, as it is from his seed that he was born; and as such is more nearly related to him than any other agnate. Where in regard to the appointed daughter, the stipulation is made by her father, that 'the son born of her shall be my son,' it does not mean the preclusion of that son being a 'son' to the other person (the girl's husband) also; all that is meant is that he would be a 'son' to the girl's father.—In case he inherits his father's property, he shall offer the *Unitary Shrāddha* to that father and the *Parvaṇa Shrāddha* to the father's father and grandfather, in the same manner as he does to his mother's father and the father and grandfather of this latter.—(*Sarvajñanārāyaṇa.*)

From the context it is clear that the term 'daughter's son' stands for the son of the appointed daughter; that he shall receive the property of his maternal grandfather having been declared in a foregoing text, the present text proceeds to declare the same in regard to his progenitor. The man who is 'the appointed daughter's son' to one man (his mother's father) shall receive the entire property of his progenitor, and he shall offer two cakes—one to his progenitor and the other to his maternal grandfather. The 'offering of the cake,' stands for the performance of the entire *Shrāddha*. The purpose served by the text is to set aside the notion that the appointed daughter's son may say that he has nothing to do with inheriting the property of, and offering the *Shrāddha* to, his progenitor.—(*Kullūka.*)

'*Aputrasya,*'—'sonless,' *i.e.*, one who has no other son.—'*Pituḥ,*' 'father,'—*i.e.*, the maternal grandfather, or the progenitor.—(*Rāghavānanda.*)

Even though he is an 'appointed daughter's son,' he shall inherit the property of his progenitor, if the latter has no other son, and he shall offer the cake to his progenitor who has no other son, and also to his maternal grandfather.—(*Nandana.*)

This must be taken as referring to cases where the deceased owner of the property has left no son or wife or daughter,—in view of the order of reference laid down by Yājñavalkya. [Apparently this explanation makes the text applicable to the *daughter's son* in general, and does not restrict it to the 'son of the appointed daughter' only.]—(*Vivādachintāmaṇi*, p. 239.)

What is stated here as the ground for the daughter's son being entitled to inherit the property is the fact that the daughter is born of the body of the maternal grandfather, and not that she has been 'appointed' as a daughter.—(*Dāyabhāga*, p. 180.)

In this text Manu has declared the title of all *daughter's sons* (not of the son of the appointed daughter only) to the grandfather's property.—The term '*pituḥ*,' 'father,' should be explained here as the 'mother's father,' that is why the text actually mentions the 'maternal grandfather' later on. Or the construction may be 'Just as he inherits the entire property of his father, so he inherits the property of his mother's father also; because he serves the purposes of a *son* for the latter also.' This is what is clearly stated in the second line of the text.—In the second verse the meaning is that 'the mother of the daughter's son and the father of the son's son are born of the body of the grandfather.'—Some people place the title of the daughter's son above that of the wife and the daughter; but this cannot be accepted, as being contrary to the order prescribed by Yājñavalkya.'—(*Vīramitrodaya*, p. 662)

What is said here is in accordance with the order of succession laid down in Yājñavalkya's text—'*Patnī duhitaraḥ*, etc.'—(*Vibhāgasāra*, 16. 1-6.)

'*Father*,'—*i.e.*, mother's father.—(*Dāyanirṇaya*, 6. 2—9.)

74. मनु 9. 131.] दौहित्र एव च हरेदपुत्रस्याखिलं धनम् ।

The daughter's son alone shall inherit the entire property of the man who has no son.—(*Manu*, 9. 131.)

NOTES

The grandson (daughter's son) alone is to inherit the entire property of the man who dies without a legitimate son. What should be the share of the daughter's son when the man has a legitimate son has been declared elsewhere — The term 'daughter's son' stands for 'the son of the appointed daughter' in the present sentence, not throughout the context.—(*Medhātithi.*)

'*Daughter's son*' here stands for the 'son of the appointed daughter'—'who has no son,' *i.e.*, his mother's father. In case the man has not 'appointed' a daughter, the daughter or the daughter's son inherits only in the absence of the wife.—(*Sarvajñanārāyaṇa.*)

'*Daughter's son*,'—*i.e.*, the son of the appointed daughter.—(*Kullūka.*)

What is meant is that one inherits the property, not only of his father, but of his maternal grandfather also.—(*Rāghavānanda.*)

'*Who has no son*,'—*i.e.*, who has had no son born to him after he 'appointed' the daughter.—His property shall be taken by the son of that appointed daughter,—not by the appointed daughter herself.—(*Nandana.*)

75. मनु 9. 136.] अकृता वा कृता वापि यं विन्देत् सदृशात् सुतम् ।
पौत्री मातामहस्तेन दद्यात् पिण्डं हरेद्धनम् ॥

Either appointed or not-appointed, if a daughter bears a son to a husband of equal status,—through that son does the

maternal grandfather become endowed with a "son's son"; he shall offer the funeral cake and inherit the property.—(*Manu*, 9. 136.)

NOTES

See II, 203.

76. विष्णु] अपुत्रपौत्रसन्ताने [*v.l.*, संसारे] दौहित्रा धनमाप्नुयुः ।
पूर्वेषां तु स्वधाकारे पौत्रदौहित्रकाः समाः [*v.l.*, पौत्रा
दौहित्रका मताः] ॥

In a case where there is no issue in the shape of the son or the son's son, the daughter's sons shall obtain the property; as in the matter of offering *Shrāddha* to the ancestors, the son's sons and the daughter's sons are equal—[*v.l.*, the daughter's sons have been declared to be *son's sons*].—(*Viṣṇu.*) [Quoted in *Mitākṣarā*, pp. 769-770; *Madanapārijāta*, p. 672; *Smṛtichandrikā*, pp, 683-684; *Dāyabhāga*, p. 181; *Vīramitrodaya*, pp. 657, 661; *Smṛtitattva II*, pp. 191-192; *Vyavahāramayūkha*, p. 141; *Dāyanirṇaya*, 6. 2—7.]

NOTES

The meaning is that in the absence of the daughter, the daughter's son inherits the property ['*Svadhākāre*' means *in the matter of the Shrāddha and other offerings*—(*Bālambhaṭṭī*).—(*Mitākṣarā*, pp. 769-770.)

In the absence of the daughter, the daughter's son receives the property.—(*Madanapārijāta*, p. 672.)

There can be no occasion for the father succeeding in the absence of the daughter; because, even in the absence of the daughter, the daughter's son would be nearer to the deceased than the father.—We should reject the view held by Dhāreshvara, Devasvāmi and Devarāta, to the effect that all this refers to the 'son of the appointed daughter'; as this latter, being 'equal to the legitimate son' would inherit, even when the wife would be there, and there would be no need for mentioning him separately—that too as succeeding in the absence of *sons and wife*,—and then add a reason for his being so entitled.—(*Smṛtichandrikā*, pp. 681-685.)

On the strength of this text Govindarāja has declared the title of the daughter's son to be superior to that of the married daughter. But this is not acceptable to us; as it is contrary to what has been said in the text—'*Sadṛshī Sadṛshenoḍhā*, etc..' The meaning is that the daughter's son succeeds only in the absence of the married daughter, even though the father and others be there. Specially as the daughter's son is always mentioned as after the

daughter and hence occupying a lower status (in the matter of inheritance). From all this the conclusion is that after the daughter, the daughter's son is entitled to inherit the property.—(*Dāyabhāga*, pp. 181-182.)

'*Aputrapautrasantāne*' stands for the absence of the son, the son's son, the son's son's son, the wife and the daughter. This does not refer to the 'son of the appointed daughter,'—(*Vīramitrodaya*, pp. 661-662.)

77. बृहस्पति] पुत्राभावे तु पत्नी स्यात् तदभावे तु सोदरः ।
तदभावे तु दायादः पश्चाद् दौहित्रकं धनम् ॥

In the absence of the son, the wife; in the absence of the wife, the uterine brother; failing him an inheritor; last of all it goes to the daughter's son.—(*Bṛhaspati.*)

NOTES

See III, 20 and 7.

78. बृहस्पति] यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु ।
तथैव तत्सुतोऽपीष्टे मातृमातामहे धने ॥

That by virtue of which the daughter is entitled to inherit her father's property even while his *Bandhus* are there,—by virtue of that same thing, her son also is the owner of the property of her mother and mother's father.—(*Bṛhaspati.*) [Quoted in *Vivādachintāmaṇi*, p. 239; *Dāyabhāga*, p. 180; *Vīramitrodaya*, p. 662; *Dāyanirṇaya*, 6. 2—9.]

NOTES

The daughter is entitled to inherit her father's property by virtue of the cake that her son offers to her father; and by virtue of that same cake—offering, the daughter's son himself is the heir to the property of his maternal grandfather. This cannot refer to the 'son of the appointed daughter.'—(*Dāyabhāga*, p 180; *Vīramitrodaya*, p. 662; also *Dāyanirṇaya*, 6. 2—10.)

Section 5

IN THE ABSENCE OF DAUGHTER'S SON,—PARENTS

79. याज्ञ 2. 137.] पत्नी दुहितरः *etc.*,

NOTES

See Sec. III. 2.

80. मनु 9. 185.] पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वा

If a man dies sonless, his father or brothers shall take his property. | (*Manu*, 9. 185)

NOTES

See III, 1 and 86.

81. मनु 9. 217.] अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् ।
मातर्यपि च वृत्तायाम्पितुर्माता हरेद्धनम् ॥

The mother shall inherit the property of her childless son; if the mother also is dead, his father's mother shall receive that property.—(*Manu*, 9. 217.) [Quoted in *Aparārka*, p 744; *Mitākṣarā*, pp. 729, 776, 779; *Vivādaratnākara*, p. 591; *Vivādachintāmaṇi*, pp. 239-240; *Smṛtichandrikā*, p. 691; *Dāyabhāga*, pp. 185, 188; *Vīramitrodaya*, pp. 632, 667; *Smṛtitattva II*, p. 195; *Vibhāgasāra*, 16. 1-7.]

NOTES

In the absence of the wife and daughter and her son, his property shall go to his father, as has been declared before. What is stated in the second line is only a sort of favour that is to be bestowed (upon the father's mother), if the mother and father have died and if no brothers or nephews are there — (*Sarvajñanārāyaṇa*.)

The mother shall take the property of her childless son. In the previous text (*Manu*, 9. 185) the father has been declared as inheriting the property of his sonless son; and in the present it is the mother that is mentioned; this is in accordance with the text of Yājñavalkya—'*Patnī duhitaraḥ, etc.*' where the compound word '*pitarau*' has been expounded in a way by which the mother comes first. *Viṣṇu* also speaks of the property of a sonless man going to the wife, then to the daughter, then to the *parents*. In view of all this, the property should be divided between the mother and the father.—If the mother is dead, then the property shall go to the father's mother, provided the wife, the father, the brother and nephews are not there.—(*Kullūka*.)

If a man dies childless, his property shall go to his mother; because by reason of her having kept him in her womb and brought him up, she is superior

to all other relatives. On the death of the mother, the father's mother shall take the property. Yājñavalkya speaks of the father taking the property, while Viṣṇu also speaks of the property of the sonless man going to the wife, then to the mother, then to the father. In view of these conflicting texts, the right course would be for the mother and the father to divide the property between themselves; such is the opinion of *Kullūka*. The correct view however is that when all the three—father, mother and wife—are living, they shall all inherit the property—'*Vṛttāyām*,' on her dying.—(*Rāghavānanda*.)

'*Childless*'—stands for one who has left no son or grandson or wife or daughter.—(*Nandana*).

If a man dies childless, his wife, daughter or mother shall inherit the property, even when the father is there.—(*Rāmachandra*.)

Manu has here asserted the mother's title to inherit the son's property.—(*Mitākṣarā*, p. 729).—Dhāreshvara has taken this text to mean that 'even when the father is there, if the mother dies, the property goes to the father's mother, not to the father; because if the property went to the father, there would be a possibility of its going to such of his sons as belong to other castes, while if it were taken by the father's mother, it would go to only persons of the same caste.'—This view is not accepted by our revered Teacher (Vishvarūpa); because sons belonging to different castes have also been declared to be entitled to inheritance,—in such texts as '*Chatustṛdvyēkabhāgāḥ syuḥ*, etc. (*Yājña*, 2. 125).—(*Ibid.*, p. 776).—In the absence of brother's sons, the property goes to *Sagotras*, the father's mother, *Sapiṇḍas* and *Samānodakas*; among these the father's mother comes first. The present text would mean that the father's mother's claim comes just after the mother's; if that were so, then there would be no point in the father, brother and brother's son being mentioned in this definite order, *i.e.*, between the mother and the father's mother; for this reason we have to take the statement 'the father's mother shall take the property' merely as declaring the title of the father's mother to inheritance (without reference to her position in the order of sequence); so that the father's mother would come in only in the absence of the brother's sons. In this manner the two texts would be reconciled.—(*Ibid.*, p. 779.)

'*Childless*' here means 'one who has left no son or wife or daughter.' The title of the father's mother should be understood to come in only in the absence of the father, brother and other *Sapiṇḍas*; because it is an established law that after the mother's title comes the title of the father and the rest.—(*Vivādaratnākara*, p. 591.)

If the deceased has left no daughter, his mother shall take his property.—If he has left no one—beginning from the wife, and ending with a *Sakulya*,—then only his father's mother shall take the property; as it has been established that the claims of the father and others come immediately after the mother's; as declared by Viṣṇu—'In the absence of the mother, the property goes to the father'; also Manu (9. 185)—'*Pitā harēdaputrasya*, etc.'—(*Vivādachintāmaṇi*, p. 240.)

It is only Yājñavalkya who has avowedly declared the precise order of inheritance; the other texts declare only the title of particular relatives (without reference to their exact position in the sequence),—say some people. But

this view cannot be accepted.—The real explanation is that the term '*childless*' stands for 'one who has left no son or wife or daughter's son.'—(*Smṛtichandrikā*, p. 691.)

In the absence of the daughter's son, the property goes to the father, not to the mother nor to the father and mother together; because these latter views would be contrary to Viṣṇu's express declaration—'In his absence, the property goes to the mother.' As regards the present text of Manu, this must be taken as referring to cases where all the persons, ending with the father, are absent. It is reasonable also that after the daughter's sons and before the mother's should come the father's title. In Yājñavalkya's text also, where the parents are mentioned by means of the term '*pitarau*,' the order would appear to be—*first* the father, *then* the mother; because the father is denoted by the basic noun '*pitṛ*' itself, while the mother is only indicated by the dual ending.—(*Dāyabhāga*, pp. 185-186)—'*If the mother is dead*,'—*i.e.*, along with all her direct descendants. The meaning is that 'on the death of the mother the father's mother *also* may inherit the property—what to say of those beginning with the brother and ending with the father's father; the brother and the rest being indicated by the particles '*api-cha*'. The sense of the text is this.—'After the direct descendants of the deceased, comes the title of his parents, before that of the descendants of the parents; similarly, the title of the father's father and father's mother comes before that of the descendants of those latter.—(*Ibid.*, p. 188.) The mother inherits the property of her sonless son; in her absence, the paternal grandmother.—(*Vibhāgasāra*, 16. 1—7.)

Here we have the declaration of the title of the mother and the father's mother to inherit the property of the sonless deceased.—(*Vīramitrodaya*, p. 632)—Some texts declare the father's title as coming before the mother's, while others declare the mother's title as superior to the father's. The point must remain undecided.—(*Ibid.*, p. 667.)

Just as in the absence of the father, the property goes to the mother, so in the absence of the father's father, it goes to the father's mother.—(*Smṛtitattva II*, p. 195.)

82. कात्यायन] अपुत्रस्याथ कुलजा पत्नी दुहितरोऽपि वा ।
तदभावे पिता माता भ्राता पुत्राः प्रकीर्तिताः ॥

When a man dies sonless, his nobly-born wife, his daughters,—in their absence his father, mothers, brothers, (their) sons—are declared (to be his heirs).—(*Kātyāyana*.)

NOTES

See III, 16.

83. पैठीनसि] अपुत्रस्य स्वर्यातस्य भ्रातृगामि धनम् । तदभावे
मातापितरौ लभेयातां पत्नी वाऽज्येष्ठा ।

If a man dies sonless, his property goes to his brother: in the brother's absence, his mother and father shall receive it; or his junior wife.—(*Paiṭhīnasī*.)

NOTES

See III, 88 ; III, 18.

84. बृहस्पति] तदभावे तु जननी तनयावा [तनयानां] समांशिनी।

In the absence of the father, the mother or the daughter shall share *equally*.—(*Bṛhaspati*, 25. 64.) [Quoted in *Vīramitrodaya*, p. 580.]

NOTES

In the compound '*tadabhāve*,' the pronoun '*tat*' must stand for the father.—(*Vīramitrodaya*, p. 580.)

85. बृहस्पति] भार्यासुत [*v.l.*, ता] विहीनस्य तनयस्य [*v.l.*, विभक्तस्य] मृतस्य च।

माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया ॥

When her [*v.l.*, divided] son has died without leaving a wife or a *son* [*v.l.*, daughter], the mother should be taken as entitled to inherit his property,—or his brother, with her consent.—(*Bṛhaspati*, 25. 63) [Quoted in *Aparārka*, pp. 744, 755; *Vivādaratnākara*, p. 591; *Vivādachintāmaṇi*, p. 239; *Smṛtichandrikā*, p. 691; *Dāyabhāga*, p. 186; *Vīramitrodaya*, p. 667; *Dvaitaparishiṣṭa*, p. 42; *Vibhāgasāra*, 16. 1—5.]

NOTES

In the absence of the father, the mother,—or with his consent, the brother,—shall inherit the property.—(*Aparārka*, p. 745.)

'*Tadanujñayā*'—with the *mother's* consent.—(*Vivādaratnākara*, p. 591.) This is in accordance with the order of succession laid down by Yājña-valkya in the text '*Patni duhitaraḥ, etc.*'—(*Vibhāgasāra*, 16. 1—6.)

'*Tadanujñayā*,'—with the mother's consent. The 'mother' includes the father also, hence the brother will succeed when both father and mother consent,—says the *Pārijāta*.—(*Vivādachintāmaṇi*, p. 239.)

The term '*bhāryā*,' 'wife,' must include the daughter, daughter's son, and the father, who come before the mother in the order of succession; hence the meaning is—'when one has died without leaving a son or wife or daughter or daughter's son or father.'—(*Smṛtichandrikā*, pp. 691-692.)

This rule should be taken as referring to cases where the deceased has left no son, wife, daughter, daughter's son or father. (For further notes see above Sec. 80 under *Manu*, 9. 217, '*Anapatyasya putrasya, etc.*'—(*Dāyabhāga*, p. 186.)

86. कात्यायन] विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत् ।
भ्राता वा जननी वापि माता वाऽस्य पितुः क्रमात् ॥

On the death of a divided member of the family, if he has left no son, his father will take the property, or his brother or mother or father's mother,—in this same order.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 745; *Mitākṣarā*, p. 730; *Vivādachintāmaṇi*, p. 241; *Smṛtichandrikā*, p. 690; *Parāsharamādhava*, p. 356; *Vīramitrodaya*, p. 633; *Dvaitaparishiṣṭa, p.* 42; *Vibhāgasāra*, 16. 2. 2; *Dāyanirṇaya*, 7. 1. 1.]

NOTES

The '*absence of the son*' is mentioned only by way of an illustration; it should be understood to mean 'absence of son, wife and daughter.'—(*Aparārka*, p. 745.)

What the alternatives (father or brother or mother, etc.) mean is that of the property left by the deceased, the portion that might have been acquired (before division) by the father shall go to the father, that acquired by the brother shall go to the brother and so on.—(*Vivādachintāmaṇi*, p. 241.)

In the phrase '*if he has left no son,*' the term 'son' stands for all those whose relationship to the deceased is closer than that of the father; so that what is meant is the absence of son, wife, daughter, daughter's son,—who confer upon the deceased more spiritual and material benefit than the father, and as such are 'nearer' to him;—in their absence the father shall take the property.—The sense is that, in the absence of the father, the property goes to the brother,—in the absence of the brother, it goes to the mother,—and in the absence of the mother, to the father's mother.—'*Order,*'—*i.e.*, the order in which they are named here.—(*Smṛtichandrikā*, p. 600.)

What the text means is that in the event of the widow becoming unchaste, the property shall be taken by the father and others.—(*Parāsharamādhava*, p. 356.)

Here the 'wife' is not even mentioned.—(*Vīramitrodaya*, p. 683.)

What is meant is that the portion acquired by the father should go to the father and that acquired by the brother should go to the brother.—(*Dvaitaparishiṣṭa*, p. 2.)

The option set forth here is restricted; so that what was acquired by the father goes to the father, what was acquired by the brother goes to the brother, what was acquired by the paternal grandmother goes to the paternal grandmother—(*Vibhāgasāra*, 16. 2-3.)

The father's title comes before that of the mother, (*a*) because, the father may offer cakes to his dead son; (*b*) because of Manu's declaration that between the seed and the womb, the seed is the more important. Vāchaspati Mishra therefore is not right when he says that the mother comes before the father—(*Dāyanirṇaya*, 7. 1-2.)



87. शातातप] सपिण्डीकरणादूर्ध्वं यत् पितृभ्यः प्रदीयते ।
सर्वस्वंशहरा माता इति धर्मेषु निश्चयः ॥

After the *Sapiṇḍīkaraṇa Shrāddha*, whatever offerings are made to the forefathers,—in all those the mother has been declared to be the sharer; such is the settled law.—(*Shātātapa.*) [Quoted in *Smṛtitattva II*, p. 185.]

NOTES

The mother shares in the cake offered to the father.—(*Smṛtitattva II*, p. 185.)

Section 6

IN THE ABSENCE OF PARENTS, BROTHERS

88. याज्ञ 2 137.] पत्नी दुहितरः etc.

NOTES

See II, 356 ; III, 2.

89. मनु 9. 212.] सोदर्या विभजेरंस्तं समेत्य सहिताः समम् ।
भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः ॥

His uterine brothers, coming together, shall divide it equally ; as also the reunited brothers and consanguineous sisters.—(*Manu*, 9. 212.)

90. मनु 9. 185.] पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वा ।

If a man dies sonless, his father or brothers shall take his property.– (*Manu*, 9. 185)

NOTES

See III, 1 and 77.

91. देवल] ततो दायमपुत्रस्य विभजेरन् सहोदराः ।
तुल्या दुहितरो वाऽपि ध्रियमाणः पिताऽपि वा ॥
सवर्णा भ्रातरो माता भार्या चेति यथाक्रमम् ॥
एषामभावे गृह्णीयुः सकुल्याः सहवासिनः ॥

The uterine brothers shall divide among themselves the property of a sonless man ; or equal daughters, or the father if he be living, (half) brothers belonging to the same caste, mother or wife, in due order. In the absence of these, the co-resident *Sakulyas* shall take the property.—(*Devāla.*) [Quoted in *Dāyanirṇaya*, 7. 1—9.]

NOTES

In the absence of *uterine brothers*, the property goes to the *half-brothers*.—(*Dāyanirṇaya*, 7. 1—9.)

92. पैठीनसि] अपुत्रस्य भ्रातृगामि द्रव्यम् । तदभावे मातापितरौ लभेयाताम्—पत्नी वाऽज्येष्ठा । सगोत्रशिष्यसब्रह्मचारिणः ।

If a man dies sonless, his property goes to his brother ; in the brother's absence, his mother and half-brothers shall receive it ; or his junior wife ; then his *Sagotra*, pupil or fellow-students.—(*Paiṭhinasi.*)

NOTES

See III, 18 ; III, 80.

93. नारद 13. 25.] भ्रातृणामप्रजाः प्रेयात् कश्चिच्चेत् प्रव्रजेत वा ।
विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना ॥

If among (reunited) brothers, any one should die or become a wandering mendicant, the others shall divide his property, except the *Strīdhana*. - (*Nārada*, 13. 25.)

NOTES

See II, 362 ; III, 11, 49.

94. बृहस्पति 25. 59.] तदभावे भ्रातरस्तु भ्रातृपुत्राः सनाभयः ।
सकुल्या बान्धवाः शिष्याः श्रोत्रियाश्च धनार्हकाः ॥

In default of the aforesaid uterine brothers, brother's sons, agnates, cognates, pupils and Vedic scholars are entitled to inherit the property.—(*Bṛhaspati*, 25. 59.) [Quoted in *Aparārka*, p 745 ; *Vivādaratnākara*, p 595 ; *Dāyabhāga*, p. 182.]

NOTES

'*The aforesaid*'—refers to the daughter's son and the parents ; hence it is only in the absence of these—daughter's son and parents—that the brother and others are entitled to inherit.—(*Dāyabhāga*, p. 183.)

95. मनु 9. 211-212.] येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः ।
म्रियेतान्यतरो वापि तस्य भागो न लुप्यते ॥
सोदर्या विभजेरंस्तं समेत्य सहिताः समम् ।
भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः ॥

If the eldest or the youngest of the brothers should be deprived of his share,—or if either of them dies,—his share

does not become lost; his uterine brothers, coming together, divide it equally; as also the reunited brothers and consanguineous sisters.—(*Manu*, 9. 211-212.)

NOTES

See II, 356.

96. अर्थशास्त्र 6. 32.] द्रव्यमपुत्रस्य सोदर्या भ्रातरः सहजीविनो वा हरेयुः—कन्याश्च ।

The property of the sonless man shall be taken by his uterine brothers, or by those living with him, and also his daughters.—(*Arthashāstra II*, p. 32.)

97. यम] अविभक्तं स्थावरं यत् सर्वेषामेव तद्भवेत् ।
विभक्तं स्थावरं ग्राह्यं नान्योदर्यैः कथञ्चन ॥

The undivided immovable property would belong to all; the divided immovable property shall never be taken by half-brothers.—(*Yama*.) [Quoted in *Dāyabhāga*, p. 204.]

NOTES

'*To all*'—*i.e.*, to the full brothers as well as to the half-brothers.—Among the full brothers also, if one has been 'reunited' (to the deceased), the property of the deceased will go to him alone. If there is one reunited full brother and another reunited half-brother, then it will go to both. If all are half-brothers, then first of all it will go to him who had been reunited, and in his absence to one who had not been reunited.—(*Dāyabhāga*, p. 204.)

NOTES

See II, 365.

98. गौतम] असंसृष्टविभागः प्रेतानां ज्येष्ठस्य ।

Among un-reunited coparceners, if some one dies, his share goes to the eldest.—(*Gautama*.) [Quoted in *Vivādaratnākara*, p. 592; *Vivādachintāmaṇi*, p. 290.]

NOTES

Where several brothers have separated and not become reunited,—if from among them some one dies childless, his share goes to the eldest among them.—This also should be taken as referring to cases where the wife, the mother and the father are not living.—(*Vivādaratnākara*, p. 592.)

99. वृद्धमनु] एकोदरे जीवति तु सापत्नो न लभेद्धनम् ।
स्थावरेऽप्येवमेव स्यात् तदभावे लभेत वै ॥

So long as a uterine brother is alive, the step-brother shall not inherit the property ; this rule applies to the case of immovable property also In the absence of the uterine brother, the step-brother would inherit it.—(*Vṛddha-Manu.*) [Quoted in *Dāyabhāga*, p. 204.]

NOTES

This refers to such immovable property as has been divided.—(*Dāyabhāga*, p. 204.)

100. याज्ञवल्क्य 2. 138-139.] संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः ।
दद्याच्चापहरेदंशं जातस्य च मृतस्य च ॥
अन्योदर्यस्तु संसृष्टी नान्योदर्यधनं हरेत् ।
असंसृष्टयपि चादद्यात् संसृष्टो नान्यमातृजः ॥

If a reunited coparcener has died, his reunited coparcener shall give his share to the son that may be born to that coparcener ; he shall himself take that share [if no such son is born] ;—but it is the uterine brother who will deal thus with the share of a uterine brother.—Even though reunited, the non-uterine coparcener (half-brother and the like) shall not take the property of a non-uterine coparcener ; even though not reunited, the uterine brother shall take the property, not the coparcener born of another mother.—(*Yājñavalkya*, 2. 138-39)

NOTES

See II, 257 and 358.

101. सङ्ग्रहकार] सोदर्याः सन्त्यसोदर्याः भ्रातरो द्विविधा यदि ।
विद्यमानेऽप्यसोदर्ये सोदर्या एव भागिनः ॥

If there are both kinds of brothers, uterine and non-uterine, it is the uterine brothers that obtain the property, even though the non-uterine brother is there.—(*Saṅgrahakāra.*) [Quoted in *Smṛtichandrikā* p 699 ; *Vīramitrodaya*, p. 669.]

NOTES

The half-brothers inherit only when there is no full brother.—(*Vīramitrodaya*, p. 669.)

Section 7

IN THE ABSENCE OF BROTHERS, (1) BROTHER'S SON, (2) SAPINDA, (3) SAKULYA, (4) BĀNDHAVA

102. याज्ञवल्क्य 2. 137.] पत्नी दुहितरः etc.

NOTES

See III, 2.

103. विष्णु] भ्रातृगामी तदभावे भ्रातृपुत्रगामी ।

The property goes to the brother, and in his absence to the brother's son.—(*Viṣṇu.*)

NOTES

See III, 3.

104. बृहस्पति] भ्राता वा भ्रातृपुत्रो वा सपिण्डः शिष्य एव वा ।
सहपिण्डक्रियां कृत्वा कुर्यादभ्युदयं ततः ॥

The brother, the brother's son, the *Sapiṇḍa* or the pupil shall perform the *Sapiṇḍīkaraṇa* and then the auspicious rites.—(*Bṛhaspati.*) [Quoted in *Vivādaratnākara*, p. 600.]

NOTES

The law on this point is thus summed up in *Dāyanirṇaya* (S. 2—3)—Among brother's sons, the son of the *uterine* brother comes first; in his absence, the son of the *non-uterine* brother; if there are sons of 'reunited' brothers as also of 'non-reunited' brothers, the property goes to the sons of the 'reunited' brothers: where the son of the *uterine* brother was *not reunited* with the dead, while the son of the *non-uterine* brother was 'reunited,' the property is divided equally between the two; if both of them have been 'reunited' with the dead, then the property goes to the son of the *uterine* brother.

105. संग्रहकार] पितर्यविद्यमानेऽपि धनं तत्पितृसन्ततेः ।
तस्यामविद्यमानायां तत्पितामहसन्ततेः ॥
असत्यामपि तस्यां ते प्रपितामहसन्ततेः ।
एवमेवोपरितनः सपिण्डा रिक्थभागिनः ॥
तदभावे सकुल्याः स्युराचार्यः शिष्य एव वा ।
सब्रह्मचारी सद्विप्राः पूर्वाभावे परः परः ॥
शूद्रस्यैकोदराभावे राजा धनमवाप्नुयात् ।
आचार्यस्याप्यभावे तु तथा क्षत्रियवैश्ययोः ॥

If the father is not living, the property (of the deceased), belongs to the descendants of the father ; if there are no off-springs of the father, it goes to the descendants of the father's grandfather ; if there are no descendants of the father's grand-father, it goes to the descendants of the father's great-grand-father ; in this same manner, succeeding *Sapiṇḍas* would obtain the property ; if there are no *Sapiṇḍas*, the *Sakulyas* would come in, or the teacher or the pupil or the fellow-student, or good Brāhmaṇas,—the succeeding one coming in only in the absence of the preceding.—In the case of the *Shūdra*, if there is no uterine brother, the king shall inherit his property ; so also in the case of the Kṣattriya and the Vaishya having no uterine brother and no teacher.—(*Saṅgrahakāra*.) [Quoted in *Smṛtichandrikā*, pp. 698-699 : *Parāsharamādhava*, p. 355.]

NOTES

Here, in asserting that 'in the absence of the deceased's father, the property goes to the descendants of that father,' the *Saṅgrahakāra* has followed the opinion of Dhāreshvara. In our opinion, however, the order would be as follows—in the absence of the father, the property goes to the mother, in the mother's absence, to the father's mother ; in the absence of this latter, to the descendants of the father of the owner of the property, in the shape of the brother and brother's sons.—(*Smṛtichandrikā*, p. 699.)

106. आपस्तम्ब] पुत्राभावे प्रत्यासन्नः सपिण्डः, तदभावे आचार्यः— तदभावेऽन्तेवासी कृत्वा तदर्थं चोपयोजयेत् ।

If there is no son, the nearest *Sapiṇḍa*,—in his absence, the teacher,—in his absence, the pupil, who shall use it for the benefit of the deceased.—(*Āpastamba*, 2. 6. 14. 2-3.) [Quoted in *Mitākṣarā*, p. 789 ; *Vivādaratnākara*, p. 596 ; *Vyavahāramayūkha*, p. 144 ; *Vivādachintāmaṇi*, p. 240.]

NOTES

What is meant is that when even *Bandhus* (cognates) are not there, the property goes to the teacher of the deceased; and if even the teacher is not there then to the pupil of the deceased.—(*Mitākṣarā*, p. 789.)

107. बृहस्पति 25. 60—62.] मृतोऽनपत्यमत्र्यश्चेद्भार्य [*v.l.*, भ्रातृ] पितृमातृकः ।
सर्वे सपिण्डास्तद्दायं विभजेरन् यथांशतः ॥
समुत्पन्नाद् धनादर्धं तदर्थं स्थापयेत् पृथक् ।
मासषाण्मासिके श्राद्धे वार्षिके वा प्रयत्नतः॥
बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा ।
यो ह्यासन्नतरस्तेषां सोऽनपत्यधनं हरेत् ॥

When a man dies childless, leaving no wife [*v.l.*, brother], father or mother,—all his *Sapiṇḍas* shall divide his property in due shares.—Whatever income might accrue from the property,—half of that should be carefully set apart for the benefit of the deceased, and assigned for his monthly, six-monthly and annual *Shrāddhas*.—When there are several *Jñātis* (*Sapiṇḍas*), *Sakulyas* (*Samānodakas*) or *Bāndhavas*,—whosoever of them is the nearest shall take the property of him who has died childless.—(*Bṛhaspati*, 25. 60—62.) [Quoted in *Aparārka*, p. 741; *Vivādaratnākara*, p. 596; *Smṛtichandrikā*, p. 697; *Vivādachandra*, 24. 2-3; *Parāsharamādhava*, p. 354; *Vīramitrodaya*, p. 660; *Vyavahāramayūkha*, p. 143.]

NOTES

'*Jñāti*' stands for *Sapiṇḍa*; and '*Sakulya*' for *Samānodaka*.—(*Smṛtichandrikā*, p. 697.)

Among *Sagotras*, one who is the most nearly related shall inherit the property of the childless person. (*Vivādachandra*, 24. 2-3.)

What is meant (by the last verse) is that in cases where there are no specific texts, the proximity of relationship is the only determining factor in inheritance.—(*Vīramitrodaya*, p. 69.)

108. गौतम 28. 21.] पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् अनपत्यस्य ।

Sapiṇḍas, *Sagotras* and those related through a common *Ṛṣi* (*Pravara*) shall inherit the property of the childless man.—(*Gautama*, 28. 21.) [Quoted in *Aparārka*, p. 742; *Mitākṣarā*, pp. 731, 736; *Parāsharamādhava*, p. 357.]

109. विष्णु] यश्चांशहरः स पिण्डदायी ।

He who inherits the property is liable for offering the cake.—(*Viṣṇu*.) [Quoted in *Vivādaratnākara*, p. 599.]

110. स्मृति] यो यद्धनमाददीत स तस्मै श्राद्धं कुर्यात् ।
पिण्डं च त्रिपुरुषं दद्यात् ॥

When a man inherits a person's property, he should perform the *Shrāddha* for him and also offer the cake to three ancestors.—(*Smṛti.*) [Quoted in *Aparārka*, p. 746 ; *Vivādaratnākara*, pp. 599-600 ; *Vivādachandra*, 24. 2—4.]

NOTES

Three ancestors—This refers to the *Amāvāsyā-Shrāddha.* – (*Aparārka*, p. 746.)

By '*Shrāddha*' here the *Ekoddiṣṭa Shrāddhas* are meant,—says the *Prakāsha.*—(*Vivādaratnākara*, p. 600.)

111. मनु 9. 187.] अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं हरेत् ।

The property shall always devolve upon him who is the nearest to the deceased *Sapiṇḍa.* -(*Manu*, 9. 187.)

NOTES

See III, 14.

112. मनु 5. 60.] सपिण्डता तु पुरुषे सप्तमे विनिवर्तते ।
समानोदकभावस्तु जन्मनाम्नोरवेदने ॥

The '*Sapiṇḍa*' *relationship* ceases with the person in the seventh degree, and the *Samānodaka-relationship*, when the origin and the name become unrecognisable. (*Manu*, p. 60.) [Quoted in *Dāyabhāga*, p. 164 ; *Vīramitrodaya*, p. 642 ; *Vyavahāramayūkha*, p. 143.]

NOTES

The meaning is that persons born of the same family are called '*Sapiṇḍa*' up to the person in the seventh grade ;—so that six persons become recognised as '*Sapiṇḍa*,' the seventh being the person concerned (the offerer of the *Piṇḍa*) himself. . . . The grandfather, the great-grandfather and other ancestors, - and also the six descendants, beginning with the son, - are called '*Sapiṇḍas*' . . . The person to whom one offers the cake, and along with whom one oneself becomes the recipient of the offering, all these come to be called '*Sapiṇḍa*' . . . Thus it comes to this that all ancestors up to seventh degree of

the great-grandfather of one's great-grandfather are his '*Sapiṇḍa*,' and similarly also the descending line of one's descendants, and the descendants of his father, grandfather and the rest. The degrees are to be counted from the person from whom the two lines bifurcate. For instance, among persons who have a common grandfather, the seven descendants should be counted from that grandfather, and all who fall within those seven degrees would be the *Sapiṇḍa* . . . Persons belonging to the *Kṣattriya* and other castes also can be '*Sapiṇḍas*' of the Brāhmaṇa ; but in the case of the *Kṣattriya* and other castes, the *Sapiṇḍa-relationship* to the Brāhmaṇa extends to three degrees only . . . But within the pale of their own castes the *Sapiṇḍa-relationship* among *Kṣattriyas* themselves extends over seven degrees. It is only in relation to other castes that the degree of the relationship varies—extending to three degrees only . Among women also, the *Sapiṇḍa-relationship* extends to three degrees. But this restricted *Sapiṇḍa-relationship* in the case of women holds good only in regard to the observance of 'impurity' . . . The final conclusion is that the seventh degree is the limit and the persons up to and including the sixth degree are *Sapiṇḍas* ;—this is what is meant by the sentence '*it ceases with the person in the seventh degree.*'—The *Samānodaka-relationship ceases when the origin and the name become unrecognisable.*—'*Origin*,' *i.e.*, 'such and such a person is born in my family' ;—'*name*,' —*i.e.*, 'he is descended from the father named so and so and the grandfather named so and so' ;—when both these are unrecognisable, the *Samānodaka-relationship* ceases.—(*Medhātithi.*)

'*Seventh degree*,'—leaving the person concerned himself ; taking himself it would be the *eighth degree* when the relationship ceases. Thus the *Sapiṇḍa-relationship* extends over one's six ancestors and six descendants, and also the descendants of these.—(*Sarvajñanārāyana.*)

The person whose *Sapiṇḍa-relationship* is going to be determined,—counting his father, grandfather and other ancestors up to the *sixth degree*, when we pass beyond that to the *seventh degree*, there the *Sapiṇḍa-relationship* ceases ; similarly among his descendants. This *Sapiṇḍa-relationship* is due to the connection of the '*Piṇḍa*,' *cake*. For instance, one offers the cake to one's father, grandfather and great-grandfather,—and the three next higher ancestors—*i.e.*, the great-grandfather's father—and the rest—are 'partakers of the smearings of the cake' ; the ancestor beyond the last has no connection with the cake ; hence he is not a *Sapiṇḍa*. The person to whom all these are *Sapiṇḍa* is himself the *Sapiṇḍa* of all these six ; as he also, being the offerer of the cake, is connected with that cake. Thus it is that the *Sapiṇḍa-relationship* extends over *seven persons*. This *Sapiṇḍa-relationship* can subsist only among persons belonging to the same *Gotra* ; that is why the maternal grandfather, though being a recipient of the cake, is not regarded as a '*Sapiṇḍa*.'—The *Samānodaka-relationship* ceases only when it ceases to be known that 'such and such a person was born in our family.'—(*Kullūka.*)

The maternal grandfather is not a '*Sapiṇḍa*' as he belongs to a different *Gotra*. Up to the person who is known to belong to one's family—*Samānodaka-relationship* extends ; after that it ceases.—(*Rāghavānanda.*)

Sapiṇḍa-relationship extends over the six ancestors, father and the rest, and the six descendants, son and the rest.—The use of the term '*puruṣa*'

indicates that the relationship does not extend to relations through women (*i.e.*, through marriage.)—The verb '*nivartate*,' 'ceases,' has to be construed with the second line also.—(*Nandana.*)

The relationship ceases in the *seventh degree*—not counting the person concerned,—counting himself in the eighth degree;—both ways—(*Rāmachandra*).

'*Saptame*' means *Saptame atīte*,' after the lapse of the seventh.

113. बृहस्पति] सपिण्डता तु पुरुषे सप्तमे विनिवर्तते ।
वृद्धमनु] समानोदकभावस्तु निवर्तेता चतुर्दशात् ॥
जन्मनामस्मृतेरेके—तत्परं गोत्रमुच्यते ॥

The *Sapiṇḍa-relationship* ceases at the seventh degree; the *Samānodaka-relationship* ceases after the fourteenth degree; according to some, this latter extends up to the point where the birth and name are recognised;—beyond that it is the *Sagotra-relationship*.—(*Bṛhaspati.*) [Quoted in *Mitākṣarā*, p. 787; *Vivādachintāmaṇi*, p. 236; *Parāsharamādhava*, pp. 353-354; *Vibhāgasāra*, 15. 1—9.]

NOTES

Up to the seventh degree after the *Sapiṇḍa-relationship* we have the *Samānodaka-relationship*; or it may be taken as extending as far as the birth and name are recognised.—(*Parāsharamādhava*, p. 353.)

114. गौतम 28. 19.] तदभावे चैकगोत्राः । तदभावे चैकप्रवराः

Failing them, the *Sagotras*; on the failure of these, those having the same *Pravara-Ṛṣis*.—(*Gautama* 28. 19.) [Quoted in *Dāyabhāga*, p. 213.]

115. नारद] अभावे तु दुहितॄणां सकुल्या बान्धवास्तथा ।
ततः सजात्याः सर्वेषामभावे राजगामि तत् ॥

In the absence of daughters, *Sakulyas* and *Bāndhavas* and then persons of the same caste (shall inherit the property); failing all, the property goes to the king.—(*Nārada.*) [Quoted in *Aparārka*, p. 745.]

NOTES

See III, 9.

116, मनु 9, 187.] अत ऊर्ध्वं सकुल्यः स्यादाचार्यः शिष्य एव वा ।

Failing these (*Sapiṇḍas*), the *Sakulya*, or the teacher or the pupil.—(*Manu*, 9. 187.) [Quoted in *Vivādaratnākara*, p. 592 ; *Dāyabhāga*, pp. 211, 213.]

NOTES

'*Sakulya*' stands for the maternal uncle and other *Bandhus* ; after that the teacher or the pupil,—whosoever may be near at hand.—(*Sarvajñanārāyaṇa*.)

The term '*Sakulya*' includes the *Bandhu* also ; and the term '*Shiṣya*,' 'pupil,' includes the fellow-students. The word '*arhati*' should be supplied.—(*Rāghavānanda*.)

The order of succession is—(1) The *Samānodaka*, (2) the teacher, and (3) the pupil.—(*Kullūka*.)

'*Ata ūrdhvam*,'—*i.e.*, in the absence of *Sapiṇḍas* ;—'*Sakulya*,' *i.e.*, the *Samānodaka* ;—'shall inherit the property'—this verb has to be brought in.—In the absence of these, the teacher, and in the teacher's absence, the pupil,—shall inherit the property.—(*Nandana*.)

'*Sakulya*' here stands for the *Samānodaka*.—(*Vivādaratnākara*, p. 592.)

'*Sakulya*'—is the name given to descendants of the great-great-grandfather and the rest, as also to the *Samānodakas*. The order is—(1) *Sapiṇḍas*, (2) *Sakulya*, *i.e.*, the descendants of the great-great-grandfather etc., (3) the *Samānodakas* (which also are spoken of by the same term '*Sakulya*'), (4) teacher, (5) pupil, (6) fellow-student, (7) *Sagotras*, (8) those having the same *Pravara*.—(*Dāyabhāga*, pp. 211, 213.)

117. बौधायन 1, 5. 11. 9—14.] प्रपितामहः, पितामहः, पिता, स्वयं, सोदर्या भ्रातरः, सवर्णायाः पुत्रः, पौत्रः प्रपौत्रः—एतानविभक्तदायादान् सपिण्डानाचक्षते। विभक्तदायादान् सकुल्यानाचक्षते। असत्स्वङ्गजेषु तद्गामी ह्यर्थो भवति। सपिण्डाभावे सकुल्यः—तदभावेऽप्याचार्योऽन्तेवासी ऋत्विगाहरेत्। तदभावे राजा।

The great-grandfather, the grandfather, the father, oneself, the uterine brothers, the son by a wife of the same caste, the grandson and the great-grandson,—these undivided coparceners, they call *Sapiṇḍas* ; the divided coparceners, they call *Sakulyas*. When there are no offsprings (of the deceased), his property goes to the aforesaid (*Sapiṇḍas*) ; in the absence of *Sapiṇḍas*, the *Sakulya* inherits it ; in the absence of *Sakulyas*, the teacher, the pupil or the priest shall inherit it ; and on failure of these, the king.—(*Baudhāyana*, 1. 5. 11. 9-14.) [Quoted in *Vivādaratnākara*, p. 596, and *Dāyanirṇaya*, 3. 1. 1.]

NOTES

The definitions provided here relate to Inheritance, not to the observance of Impurity ; in the matter of the latter all who share the cake-offering are *Sapiṇḍas* ' ; so that even *divided* coparceners could be ' *Sapiṇḍas* ' ; while according to the present text divided coparceners are to be ' non-*Sapiṇḍas*.' ' *Aṅgajēṣu*,' ' offsprings,' *i.e.*, the ' Legitimate ' and other sons.- ' *Tadgāmi*,' goes to the *Sapiṇḍas* and the rest.—(*Vivādaratnākara*, p 596.)

118. मनु 9. 186.] त्रयाणामुदकं कार्यं त्रिषु पिण्डः प्रवर्तते ।
चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते ॥

To three should water-libations be offered ; to three is the cake offered ; the fourth is the offerer of these (offerings) ; there can be no fifth. - (*Manu*, 9. 186.)

NOTES

See II, 68.

119. वृद्धशातातप] आत्मपितृष्वसुः पुत्रा आत्ममातृष्वसुः सुताः ।
or
बौधायन] आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः ॥
पितुः पितुःस्वसुः पुत्राः पितृमातृष्वसुः सुताः ।
पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः ॥
मातुः पितृष्वसुः पुत्राः मातुर्मातृष्वसुः सुताः ।
मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः ॥

One's own father's sister's sons, one's mother's sister's sons, and one's maternal uncle's sons are to be known as one's own *Bāndhavas*.—The father's father's sister's sons, the father's mother's sister's sons and the father's maternal uncle's sons are called one's *Paternal Bāndhavas*.—The mother's father's sister's sons, the mother's mother's sister's sons and the mother's maternal uncle's sons are called one's *Maternal Bāndhavas*.—[Quoted in *Mitākṣarā*, p. 788 ; *Vivāda-chintāmaṇi*, p 242 ; *Madanapārijāta*, p. 674 ; *Smṛtichandrikā*, p. 697 ; *Parāsharamādhava*, p. 354 ; *Vīramitrodaya*, pp. 673-674 ; *Smṛtitattva II*, p. 196 ; *Vyavahāramayūkha*, p. 144 ; *Vibhāgasāra*, 16. 2—8.]

NOTES

There are three kinds of *Bandhus*—(1) one's own, (2) one's father's, and (3) one's mother's ; among these the first, being more intimately related to the deceased, are the first to inherit his property, failing them, his father's

Bandhus, and failing these latter, his mother's *Bandhus*; this should be understood to be the order of succession.—(*Mitākṣarā*, p. 788.)

The title of these to inheritance is in the order in which they are named in the text. Such is the opinion of *Bālarūpa* also.—(*Vivādachintāmaṇi*, p. 242.)

Among these *one's own bandhus* are the first to inherit the property, as they are most intimately related (to the deceased), and because they are the first to be named in the text; failing them come the *father's bandhus*, for the same reason; and failing these latter, the *mother's bandhus*, for the same reason. Such is the order of succession.—(*Madanapārijāta*, p. 674.)

The more near *Bāndhavas* have been named, in the order of nearness, in this *Smṛti*-text.—(*Smṛtichandrikā*, p. 697.)

The three kinds of *Bāndhavas* have been described here by Baudhāyana.—(*Parāsharamādhava*, p. 351.)

There are three kinds of *Bandhus*—one's own, one's father's and one's mother's; among these, one's own *Bandhus* being the more intimately related are the first to inherit the property; failing them, the father's *bandhus*, and failing these latter, the mother's *bandhus*. Such is the order of succession.—(*Vīramitrodaya*, p. 674.)

The more intimate *Bāndhavas*—one's own, one's father's and one's mother's—inherit the property in this same order.—(*Smṛtitattva II*, p. 196.)

The order of succession among these shall be in the same order in which they are named in the text. It will not be right to argue that "the present text only explains certain names and does not speak of the persons named being entitled to inheritance";—because even if this text were not there, the signification of the names could easily have been grasped; we do not need a text to tell us the meaning of the term '*pitṛbandhu*,' for instance; we get at the signification from the signification of the component parts of the name itself; hence the text would be entirely superfluous if it only explained the signification of the names. It serves a useful purpose only as laying down the fact of the persons named being entitled to inherit property.—(*Vyavahāra-mayūkha*, p. 144.)

The title to succession is in the same order in which the relations are named here.—(*Vibhāgasāra*, 16. 2—11.)

The *Dāyanirṇaya* (10. 1. 1-2) sums up the law relating to the connection between the *inheriting of property* and *offering the Shrāddha*.—The heirs, beginning with the *son* and ending with the *daughter's son*, are entitled to inherit property and also to offer *Shrāddha*; in the absence of these, though the father and mother are to inherit the property, the *Shrāddha* is to be performed by the *brother* and the rest, even though the parents are there; the *Shrāddha* is to be performed by the *uterine* brother, and only in his absence, by the half-brother; then the son of the uterine brother, then the son of the half-brother;—in the absence of these, by the father; then the maternal uncle; and the teacher. The prohibition that 'the father should not offer *Shrāddha* to the son' must refer to cases where the other relatives, ending with the brother's son, are there. In the absence of all these, the *Shrāddha* is to be performed by the daughter-in-law; then the father-in-law. After all these, the mother, then the grandsons of the brother.

Section 8

OTHER HEIRS : THE KING, ETC.

119. याज्ञवल्क्य 2. 138.] वानप्रस्थयतिब्रह्मचारिणां ऋक्थभागिनः ।
अर्थशास्त्र 2. 98.] क्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिनः ॥

The property of the Hermit, the Renunciate and the Religious Student is inherited by the teacher, the good pupil, *the spiritual brother and the co-religionist* [or according to the *Mitākṣarā*, a brother-hermit], *in this same order of sequence* [or, according to *Mitākṣarā*, *in the reverse order*].—(*Yājña-valkya*, 2. 138 ; *Arthashāstra II*, p. 98.) [Quoted in *Smṛti-chandrikā*, p. 699 ; *Dāyabhāga*, p. 217 ; *Vīramitrodaya*, 675 ; *Vyavahāramayūkha*, p. 145 ; *Vivādaratnākara*, p. 600; *Vivādachintāmaṇi*, p. 244 ; *Madanapārijāta*, p. 676 ; *Vivāda-chandra*, 24. 2—5 ; *Parāsharamādhava*, p. 365 ; *Vibhāgasāra*, 17. 1—3.]

NOTES

The '*Brahmachāri*,' 'Religious Student' meant here is the *Lifelong Student* ;—'*Dharmabhrātā*' is one who is related to the same teacher ;—'*ēkatīrthī*' is one belonging to the same life-stage. The rest is clear. In the case of persons other than those mentioned here, the division of property shall be in the manner described in the foregoing texts.—(*Vishvarūpa*.)

If any one of the persons mentioned—the Hermit and the rest—dies, his property shall be taken by the teacher and the rest 'in the order in which they are named.'—Each succeeding one taking it in the absence of the preceding.—'*Sachchhiṣya*,' *good pupil*, is the pupil endowed with excellent qualifications. —'*Dharmabhrātā*,' '*spiritual brother*,' is one who has been initiated by the same teacher.—'*Ekatīrthi*' is the person belonging to the same persuasion (holding the same views), or the person living in the same sacred place, such as Benares and the like.—That the hermit has property is indicated by such texts as lay down that the hermit should give away his accumulated wealth during the month of '*Āshvina*.' The renunciate and the religious student also possess such things as the ragged clothing and the like.—(*Aparārka*.)

This is an exception to the general rule that property is inherited by sons and grandsons, and in their absence, by the wife and other relatives.—Of the Hermit, the Renunciate and the Religious Student,—the property is taken by

the teacher, the good pupil and the co-adjutor—spiritual-brother,—'*in due order*,' *i.e.*, in the reverse order. (*a*) The 'religious student' meant here is the lifelong student; as for the other kind of religious student, the one going to enter life, his property goes to his mother and other relatives; it is as an exception to this general rule that we have the exception regarding the lifelong student, that his property goes to his teacher.—(*b*) The property of the Renunciate is taken by his 'good pupil,' *i.e.*, the pupil who is efficient in listening to the philosophical scriptures, retaining them in his mind and acting up to them. Those that are misbehaved,—even though they be the teacher and the like,—are not entitled to share the property. —(*c*) The property of the Hermit is taken by the '*Dharmabhrātrēkatīrthī*'—'*Dharmabhrātā*' is one who is adopted as one's brother; '*Ekatīrthī*' is one who belongs to the same order; so that the *Dharmabhrātrēkātīrthī*' (which is Karmadhāraya compound) stands for the 'brother hermit.'—In the absence of the teacher and all the rest, the property is taken by a fellow-hermit, even when the man may have sons and grandsons. *Objection*:—"Vasiṣṭha has declared that persons belonging to orders other than that of the Householder can have no shares in property; therefore these other can have no connection with any property; how then can there be any division (or inheriting) of property belonging to these? Nor is it possible for the Lifelong Student to have any self-acquired property; as the receiving of gifts and such other sources have been forbidden to him. As for the Renunciate (or wandering mendicant), Gautama has declared that he cannot accumulate wealth; so that he also cannot have any self-acquired property."—*Answer*.—As for the Hermit, he has connection with wealth, as is clear from such texts as—'He shall accumulate wealth enough to last for a day or a month or six months or a year, and give it all away in the month of *Āshvina*.'—As for the Renunciate, he has to keep a loin-slip, a cloth for covering himself, Yogic books and accessories and sandals.—As for the lifelong student, he also has to have such property as clothes and other things necessary for the keeping of the body.—Thus then it is only right that the texts should lay down the method of dividing their property.—(*Mitākṣarā*.)

This text mentions the heirs to the Hermit and others.—(*a*) The property of the Hermit—accumulated by him in accordance with the text—'He shall accumulate wealth and give it away in the month of *Āshvīna*,'—(*b*) the property of the Renunciate, held in accordance with the text that 'he shall keep the accessories to Yoga and sandals,'—and (*c*) the property of the Lifelong Student, in the shape of clothing,—all this shall be taken by the teacher and the rest, '*in due order*,' *i.e.*, each succeeding one taking it in the absence of the preceding. '*Āchārya*' is the teacher;—'*good pupil*' is one efficient in listening to and retaining in mind all the teachings about the self.—'*Ekatīrthī*' is fellow-student; one who has acquired learning from the same teacher; this last is the 'brother' in 'spiritual matters,' in the performance of religious duties;—called 'brother' as having the same teacher, who is in the place of the father.—(*Vīramitrodya-Ṭīkā*.)

The Religious Student, as mentioned here along with the Renunciate, must be taken to be the Lifelong Student.—'*Dharmabhrātā*,' one having the same teacher.—'*Ekatīrtha*,' one studying the same science.—'*In due order*,'

i.e., each succeeding one inheriting in the absence of the preceding.—(*Smṛti-chandrikā*, p. 699.)

The property is to go to the persons mentioned '*in due order*,' i.e., *in the reverse order*.—The 'religious student' must be taken as the *lifelong* one; the property of the student who is 'going to enter life' goes to the father and other relatives.—(*Dāyabhāga*, p. 217.)

The 'religious student' meant here is the *lifelong* one; as for the student 'who is going to enter life,' as it is not possible for him to have a 'son, wife, daughter or daughter's son,' his property shall go to the father and the rest (mentioned in Yājñavalkya's list).—The 'order' meant here is the *reverse order*; so that the property of the dead Religious Student goes to his teacher,—of the Renunciate, to his good pupil,—of the Hermit, to his brother-hermit. '*Dharmabhrātā*' is one adopted as a brother, and '*ekatīrthī*' is one belonging to the same order.—The 'goodness' of the pupil in this connection does not consist in his *having a good character*, because one having a bad character would be naturally excluded on the strength of other facts; it consists in the efficiency to listen to, retain and put into practice, the teachings of the philosophical scriptures.—The view of the *Madanaratna*, however, after quoting Viṣṇu's text that 'the property of the Hermit goes to the teacher, or the pupil,' is that the 'order' meant in the present text is the same in which the persons have been mentioned, so that the Hermit's property should go to the teacher, and failing him, to the pupil . . . (Though the acquiring and holding of property has been forbidden for the Hermit and the rest mentioned here, yet)—(*a*) so far as the Hermit is concerned, he has been permitted to accumulate wealth enough to suffice for a day or a month or six months or a year and to give it all away in the month of *Āshvina*; (*b*) the Renunciate has to have cloth for his loin-slip and covering for the body, books and other things; and (*c*) for the Lifelong Student also it is necessary to have such clothes as are necessary for the keeping of the body. So that when any of these die, the question would arise as to the person by whom these things should be taken; and the present text serves to preclude all other possible heirs and declares the persons mentioned as the only ones entitled to receive the property.—(*Vīramitrodaya*, pp. 675-676.)

[*Vyavahāramayūkha*, (p. 145) quotes the view of the *Mitākṣarā* and of *Madana* (as mentioned in *Vīramitrodaya*.]

'*In due order*,' *i. e.*, in the reverse order; so that the property of the Lifelong Student shall be taken by the teacher,—of the Renunciate, by his '*good pupil*,' *i. e.*, by the pupil who is efficient in the learning and acting up to the philosophical scriptures,—of the Hermit, by the '*Dharmabhrātrekatīrthī*,' '*dharmabhrātā*' is one who has been accepted as a brother, and '*ekatīrthī*' is one belonging to the same order.—Though all this goes against Vasiṣṭha's dictum that persons other than the House-holder, can hold no property, yet the present text may be somehow reconciled by making it refer to some little things that are held by all men. (*Vivādaratnākara*, p. 600.)

'*In due order*,' *i.e.*, in the reverse order; so that the property of the Religious Student should go to the Head-Teacher of the *Gurukula*; of the Renunciate, to his pupil;—of the Hermit, to another hermit who has been

treated by him as a brother. Though according to Vaṣiṣṭha's dictum, the Hermit and the rest can have no ancestral property, yet the Hermit has his yearly accumulation, and the Renunciate his loin-slip and such things.—(*Vivādachintāmaṇi*, p. 244.)

It is the Lifelong religious student that is meant here, not one who is going to enter life.—'*Good pupil*,' *i.e.*, endowed with knowledge and contemplation of the philosophical teachings.—'*Dharmabhrātā*,' is one who has been accepted as a brother ;—'*ekatīrthī*,' is a person belonging to the same order, *i.e.*, another hermit ; hence the compound means a *brother-hermit* living near one's own hermitage.—'*Order*' here stands for the *reverse order*. Thus the property of the Hermit, in the shape of his annual supply of grains, shall go to his 'brother-hermit' ; the property of the Renunciate, in the shape of clothes, books and so forth, shall go to his 'good pupil' ; and the property of the Lifelong Student in the shape of clothes and the like, shall go to his teacher.—(*Madanapārijāta*, p. 676.)

'*In due order*,' *i.e.*, in the reverse order; so that the teacher receives the property of the Lifelong Student ; the pupil takes the property of the Renunciate ; the property of the Hermit is taken by another hermit who may have been treated by the deceased as a 'brother-hermit.'—(*Vivādachandra*, 24-25.)

Here the reverse order is intended ; so that the property of the Lifelong Student is taken by the teacher, not by his father and other relatives ;—the property of the student 'going to enter life' is taken by his father and other relations ;—the property of the Renunciate is taken by a 'good pupil,' who is efficient in listening to, retaining and acting up to the philosophical scriptures ; one who is misbehaved receiving no share ;—the property of the Hermit is taken by another hermit who has had the same teacher as the deceased.—Or the meaning of the text may be that the property of the Hermit, the Renunciate and the Religious Student is inherited in the following order of succession—(1) teacher, (2) good pupil, and (3) the spiritual brother belonging to the same order, *i.e.*, each succeeding one receiving it in the absence of the preceding. What the dictum of Vasiṣṭha—'persons belonging to other orders do not receive shares' means is that a person of one order shall not inherit the property of one of another order ; it does not mean that there can be no sharing of the property among members of the same order.—(*Parāsharamādhava*, p. 365.)

The order of succession meant here is in the reverse order. So the *Āchārya* is the successor of the Religious Student, the pupil of the Renunciate,—of the Hermit, another hermit regarded as his brother. In the case of the Hermit and the Renunciate, though ancestral property is not possible, yet they have such property as the loin-slip and the like.—(*Vibhāgasāra*, 17. 1—4.)

120. आपस्तम्ब] अन्तेवासी वाऽर्थांस्तदर्थेषु धर्मकृत्येषु योजयेत् ।

The pupil may employ his property in religious performances for the benefit of the deceased.—(*Āpastamba.*) (Quoted in *Smṛtitattva II*, p. 196.]

NOTES

'*Performances*,'—such as the monthly and other *Shrāddhas*.—(*Smṛti-tattva II*, p. 196.)

121. विष्णु] वानप्रस्थस्य धनमाचार्यो गृह्णीयाच्छिष्यो वा ।

The property of the Hermit shall be taken by the teacher or the pupil.—(*Viṣṇu.*) [Quoted in *Vīramitrodaya*, p. 675; *Vyavahāramayūkha*, p. 145; *Vivādaratnākara*, p. 600; *Vivāda-chandra*, 24. 2–5.]

122. गौतम 28. 39.] श्रोत्रिया ब्राह्मणस्यानपत्यस्य रिक्थं भजेरन् ।

Vedic scholars shall take the property of the childless Brāhmaṇa.—(*Gautama*, 28. 39.) [Quoted in *Mitākṣarā*, p. 790; *Vīramitrodaya*, p. 675; *Vyavahāramayūkha*, p. 144; *Madana-pārijāta*, p. 675.]

NOTES

In the absence of the fellow-student, any Vedic scholar may take the property of a dead Brāhmaṇa.—(*Mitākṣarā*, p. 790.)

In the absence of all the relations mentioned, down to the fellow-student, the Vedic scholar shall take the property; and failing him, any Brāhmaṇa.—(*Vīramitrodaya*, 1. 675.)

'*Vedic scholar*,' *i.e.*, one who has studied the same Vedic rescension as the deceased.—In his absence, the property goes to any Brāhmaṇa, who may be near at hand.—(*Madanapārijāta*, p. 675.)

123. मनु 9. 188.] सर्वेषामप्यभावे च ब्राह्मणा रिक्थहारिणः ।
त्रैविद्याः शुचयो दान्ताः—एवं धर्मो न हीयते ॥

On the failure of all (heirs), the property shall be taken by Brāhmaṇas, learned in the three Vedas, pure and self-controlled; in this manner the law would not be violated.—(*Manu*, 9. 188.) [Quoted in *Aparārka*, p. 745; *Mitākṣarā*, p. 790; *Madanapārijāta*, p. 675; *Vivādaratnākara*, p. 597; *Smṛtichandrikā*, p. 698; *Parāsharamādhava*, p. 354; *Dāya-bhāga*, p. 214; *Vīramitrodaya*, p. 674; *Vyavahāramayūkha*, p. 144.]

NOTES

'*Brāhmaṇas*,'—living in the same village;—'*Traividyāḥ*,' well-versed in the Vedic Triad;—'*Shuchayaḥ*,'—well-behaved;—'*Dāntaḥ*,' with senses under control.—This refers to the property of a dead Brāhmaṇa; the property of other persons go to the king.—(*Sarvajñanārāyaṇa*.)

Instead of saying 'failing these,' the text has used the expression '*on the failure of all*,' with a view to indicate the title of the fellow-student and others also to inheritance. On the failure of all others,--Brāhmaṇas, who have studied the three Vedas, are internally and externally pure, have their senses under control inherit the property, and, on that account, become liable to offer the cake to the dead; so that in this manner, the deceased does not suffer in the matter of the *shrāddha* and other offerings.—(*Kullūka*.)

'*Dharmo na hīyatē*'—because the said Brāhmaṇas duly accomplish the *shrāddha* and other rites. This is a mere reiteration.—(*Rāghavānanda*.)

'*Of all*'—men and women, somehow or other related to the deceased.—(*Nandana*.)

'*Dharma*,' duty of the king—is not violated.—(*Rāmachandra*.)

In the absence of the 'Vedic scholar,' any *Brāhmaṇa* may take the property.—(*Mitākṣarā*, p. 790.)

In the absence of the Vedic scholar who has studied the same Vedic text, the property shall go to any mere Brāhmaṇa who may be near at hand.—(*Madanapārijāta*, p. 675.)

This answers the question—who is to inherit when even a fellow-student is not there —(*Smṛtichandrikā*, p. 698.)

In the absence of even those who have the same *Pravara* as the deceased, Brāhmaṇas shall inherit the property.—The '*dharma*,' spiritual merit, of the deceased does not suffer; because even though being exhausted by his happy experiences, it becomes augmented by the merit of his wealth having gone to Brāhmaṇas.—(*Dāyabhāga*, p. 214.)

124. नारद] सर्वत्रादायकं राजा हरेत् ब्रह्मस्ववर्जितम् ।
अदायकं तु ब्रह्मस्वं श्रोत्रियेभ्यः प्रदापयेत् ॥

In all cases where there is no heir, excepting that of the property belonging to a Brāhmaṇa, the king shall take the property; and the property of the Brāhmaṇa, which there is no one to inherit, the king shall hand over to Vedic scholars.—(*Nārada*.) [Quoted in *Vivādaratnākara*, p. 597; *Vivādachintāmaṇi*, p. 243; *Vyavahāramayūkha*, p. 145; *Dāyanirṇaya*, 9. 2-8.)

NOTES

'*Adāyikam*,'—which there is no one to inherit.—(*Vivādaratnākara*, p. 591; also *Vivādachintāmaṇi*, p. 243.)

125. बृहस्पति 25. 67-68.] येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः ।
तेषां धनहरो राजा सर्वस्याधिपतिर्हि सः ॥
अन्यत्र ब्राह्मणात्—किन्तु राजा धर्मपरायणः ।
तत्स्त्रीणां जीवनं दद्यात्—

Should a *Kṣattriya*, *Vaishya* or *Shūdra* die without son, wife or brother, their property shall be taken by the king, as he is the lord of all, - except in the case of the Brāhmaṇa. But the righteous king shall provide maintenance for his women.—(*Bṛhaspati*, 25. 67-68.) [Quoted in *Aparārka*, pp. 745, 746; *Mitākṣarā*, 9. 747; *Vivādaratnākara*, p. 598; *Vivādachintāmaṇi*, p. 243; *Vīramitrodaya*, p. 649; *Vyavahāramayūkha*, p. 145; *Smṛtichandrikā*, p. 698; *Parāsharamādhava*, p. 359; *Dāyanirṇaya*, 9. 2—7]

NOTES

'*Without son, wife or brother*,'—this is meant to include all those down to the 'fellow-student,' who have been mentioned as 'heirs.' The order of succession among those having been fixed, the king could not come in between any two of them.—(*Vīramitrodaya*, p. 649.)

This refers to the 'kept' women; that is why the term used is '*strī*' (woman) [not '*patnī*,' 'wife']. - (*Mitākṣarā*, p. 747.)

'*Tatstrīṇām*,'—those non-Brāhmaṇa women who are not entitled to inherit property.—(*Smṛtichandrikā*, p. 698.)

This refers to the 'kept' women; as the word used is '*strī*' (women).—(*Parāsharamādhava*, p. 359.)

126. कात्यायन] अदायिकं राजगामि योषिद्भृत्यौर्ध्वदेहिकम् ।
अपास्य, श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेत् ॥

That property to which there is no heir goes to the king, saving that which may be needed for the maintenance of the women and dependents and the performance of the after-death rites (of the deceased); the property of the Vedic scholar, he shall make over to Vedic scholars. - (*Kātyāyana*.) [Quoted in *Mitākṣarā*, p. 746; *Parāsharamādhava*, p. 359; *Vyavahāramayūkha*, p. 139.]

NOTES

'*Adāyikam*,' to which there is no heir; such property 'goes to the king,' passes into the possession of the king;- saving that which may be

required for the feeding and clothing of the dead owner's women, and for his 'after-death rites,'—*i.e.*, *Shrāddhas*,—all the rest goes to the king. There is an exception to the said rule : As for the property of the Vedic scholar,—setting aside what may be needed for the support of his women and dependents and for his *Shrāddha*,—the king shall make it over to a Vedic scholar.—The reference here is to the 'kept' women,—as the term used is '*yoṣit*,' 'woman.'—(*Mitākṣarā*, p. 746.)

Setting aside what may be needed for the food and clothing (of the dead man's women and dependents) and his *shrāddha*,—the property to which there is no heir shall go to the king. But the property of the Vedic scholar,—after setting aside what may be needed for the maintenance of his women and dependents—goes to another Vedic scholar, not to the king.—(*Parāsharamādhava*, p. 359.)

This refers to the 'kept' women.—(*Vyavahāramayūkha*, p. 139.)

127. अर्थशास्त्र] अदायकं राजा हरेत् स्त्रीवृत्तिप्रेतकार्यवर्जम्—अन्यत्र श्रोत्रियद्रव्यात् । तत् त्रैविद्येभ्यः प्रयच्छेत् ।

The king shall take the property to which there is no heir, save what may be needed for the maintenance of the women and for the *Shrāddha* (of the deceased); except the property of the Vedic scholar, which the king should make over to persons learned in the three Vedas.—(*Arthaṣāstra II*, p. 34.)

128. मनु 9. 189.] अहार्यं ब्राह्मणद्रव्यं राज्ञा नित्यमिति स्थितिः ।
इतरेषां तु वर्णानां सर्वाभावे हरेन्नृपः ॥

The property of the *Brāhmaṇa* should never be taken by the king; such is the law. But in the case of other castes, the king shall take the property in the absence of all (heirs).—(*Manu*, 9. 189.) [Quoted in *Aparārka*, p. 745; *Mitākṣarā*, pp. 777, 790, 791; *Vivādaratnākara*, p. 597; *Vivādachintāmaṇi*, p. 243; *Madanapārijāta*, p. 675; *Smṛtichandrikā*, p. 698; *Parāsharamādhava*, p. 355; *Dāyabhāga*, p. 217; *Vīramitrodaya*, p. 674; *Vibhāgasāra*, 16. 2—11.]

NOTES

'*In the absence of all heirs*'—down to the 'pupil.'—(*Sarvajñanārāyaṇa*.)

The rule of the law is that the king shall never take the property of the Brahmaṇa; in the absence of Brāhmaṇas possessing the requisite qualifications, the king shall make over that property to any ordinary Brahmaṇa. The property of the *Kṣattriya* and the other castes however the king himself shall take over, if there is no one of those who have been declared as entitled to inherit.—(*Kullūka.*)

What is meant is that the Brāhmaṇa's property may be given even to a low *Brāhmaṇa*.—(*Rāghavānanda.*)

'*Nṛpa*,' 'king,' is the guardian of the country.—(*Aparārka*, p. 746.)

The king shall never take the property of the Brāhmaṇa; that of the *Kṣattriya* and other castes,—in the absence of all heirs, down to the fellow-student,—shall be taken by the king, not by the Brāhmaṇa.—(*Mitākṣarā*, pp. 790, 791.)

As for the property of the *Kṣattriya* and the other castes,—if there are no heirs, down to the fellow-student,—it shall be taken by the king, and not by the Brāhmaṇa.—(*Madanapārijāta*, p. 675.)

'*Nṛpa*,' the guardian of the country, and the town.—(*Smṛtichandrikā*, p. 698.)

The Brāhmaṇa's property shall never go to the king; that of the *Kṣattriya* and the other castes goes to the king, if there are no heirs, down to the fellow-student.—(*Parāsharamādhava*, p. 355.)

'*In the absence of all*'—including even the Brāhmaṇa.—With the exception of the property of the Brāhmaṇa, the property of all heirless persons shall go to the king.—(*Dāyabhāga*, p 217.)

129. बौधायन] ब्रह्मस्वं पुत्रपौत्रघ्नं हन्यादेकाकिनं विषम् ।
तस्माद्राजा ब्राह्मणस्वं नाददीत कथञ्चन ॥

The Brāhmaṇa's property, like poison, destroys the king along with his son and grandson; therefore, the king shall never take the property of the Brāhmaṇa.—(*Baudhāyana.*) [Quoted in *Vivādaratnākara*, p. 597; *Vivādachintāmaṇi*, p. 243; *Vibhāgasāra*, 16. 2—12; *Dāyanirṇaya*, 9. 2—7.]

NOTES

The Brāhmaṇa's property is like poison.—(*Vivādaratnākara*, p. 597.)

130. नारद] ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन ।
ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपोऽन्यथा ॥

On the death of a Brāhmaṇa, if there is no heir to his property, it should be given to a Brāhmaṇa; otherwise the

king would incur sin.—(*Nārada.*) [Quoted in *Mitākṣarā*, pp. 790, 791; *Madanapārijāta*, p. 675; *Smṛtichandrikā*, p. 698; *Parāsharamādhava*, 355; *Vīramitrodaya*, p. 675.]

NOTES

'*Tannāshe*,'—on the death of the owner of the property.—(*Smṛtichandrikā*, p. 698.)

131. शङ्खलिखित] परिषद्गामि श्रोत्रियद्रव्यम्, न तु राजगामि ।

The property of the Vedic scholar goes to the society, not to the king.—(*Shaṅkha-Likhita.*) [Quoted in *Aparārka*, p. 746; *Vivādaratnākara*, p. 598; *Vivādachintāmaṇi*, p. 293; *Vibhāgasāra*, 17. 1. 1.]

NOTES

'*Pariṣat*,'—'society,' stands here for Brāhmaṇas—(*Vivādaratnākara*, p. 598.)

The order of succession is as follows :—son—son's son—son's son's son—chaste wife—daughter—mother—father—brother—brother's son—near *sapiṇḍa*—remote *sapiṇḍas*, in order of nearness,—near *sakulya*—remote *sakulyas*, in order of nearness—maternal relations—the king, except in the case of *Brāhmaṇa's* property, in which case it goes to another good *Brāhmaṇa*.—(*Vivādachintāmaṇi*, pp. 243-244.)

By '*Pariṣat*,'—Brāhmaṇas are meant here.—The upshot of the whole law of succession is that it goes in the following order :—(1) son, (2) son's son, (3) son's son's son, (4) chaste wife, (5) daughter, (6) mother, (7) father, (8) brother, (9) brother's son, (10) near *sapiṇḍa*, (11) remoter *sapiṇḍa*, (12) maternal relations, (13) king (except in the case of the Brāhmaṇa's property).—(*Vibhāgasāra*, 17. 1—1.)

132. शङ्खलिखित] प्रक्षीणस्वामिकानि राजगामीनि भवन्ति ।

Properties with no owners (*i.e.*, unclaimed) go to the king.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 599]

Section 9

GENERAL RULES FOR THE KING

133. बौधायन 2. 3—36.] तेषामप्राप्तव्यवहाराणां सोपचयानंशान् सुगुप्तान् निदध्यात् आव्यवहारप्रापणात् ।

He shall keep carefully guarded the shares of minors along with the accruing profits, till they attain majority.—(*Baudhāyana*, 2. 3 - 36.) [Quoted in *Vivādaratnākara*, p 599.]

NOTES

'*Sopachayān*'—'along with accruing profits';—'*Suguptān*'—well-guarded; —till before the seventeenth year of their age.—(*Vivādaratnākara*, p. 599.)

134. शङ्खलिखित] रक्षेद्राजा बालानां धनानि अप्राप्तव्यवहाराणां श्रोत्रिय-वीरपत्नीनाम् ।

The king shall take care of the property of minors and of the wives of such Vedic scholars as may have gone away.—(*Shankha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 599.]

NOTES

'*Shrotriyavīrapatnīnām*,'—the wives of such *Shrotriyas* as have become '*vīra*'—*i.e.*, gone away.—(*Vivādaratnākara*, p. 599.)

135. मनु 8. 27.] बालदायादिकं [*v.l.*, बालदायगतं] रिक्थं तावद्राजाऽनुपालयेत् ।
यावत्स्यात् स समावृत्तो यावद्वा [*v.l.*, च्चा] तीतशैशवः ॥

The king shall take care of the property owned by a minor till such time as he may return from the teacher's house, or till he may have passed his minority.—(*Manu*, 8. 27.) [Quoted in *Vivādaratnākara*, p. 244; *Vibhāgasāra*, 17. 1—6]

NOTES

'*Bāladāyādi,*' 'that of which a minor is the *dāyādi,*' *owner*. The property owned by minors shall be taken care of by the king, till such time as the boy may return from the teacher's house, or till he may have passed his minority.—The second alternative of 'passing the minority' is meant for those who pass their childhood in their own home (and are not handed over to a teacher). In the case of one however who has entered the teacher's house as a Religious Student—even though he may have passed his minority—his property shall have to be looked after until he returns from the teacher's house.—Or the meaning may be that in the case of twice-born persons, the 'return' shall be the limit, while in that of others, it shall be 'the passing of minority.'—(*Medhātithi.*)

'*Anupālayet,*'—should take over under his charge and guard it.—'*Return from the teacher's house,*'—*i.e.*, after the period of thirty-six years and the like. If during this interval, there arises any need for drawing upon the minor's property,—with a view to this contingency, the text has added the other alternative—'*till he may have passed his minority*'—'minority' lasting till the end of the sixteenth year.—(*Sarvajñanārāyaṇa.*)

In a case where the property of a minor without a guardian is in the wrongful possession of his uncle and other relations, the king should take care of it till such time as he may return from the teacher's house after having completed the course of study lasting for thirty-six years and so forth; as by that time the minor will have passed over his inexperience. In a case however where 'on account of incapacity the boy returns' from the teacher's house during his boyhood, his property shall be guarded by the king till he passes his minority;—the period of minority extending over sixteen years; as says Nārada. 'One remains a minor till the sixteenth year.'—(*Kullūka.*)

'*Bāladāyādikam,*'—the' property owned by a boy who has no guardian,—the king shall guard against his uncle and others;—till he returns from the teacher's house, or—in the case of the *Shūdra* and others—till he has passed his minority.—(*Rāghavānanda.*)

'*Dāyāda*'—is *owner*; '*bāladāyādi*'—is *that of which a minor is the owner*;—such property the king shall guard against the relatives and others who may be trying to take possession of it.—Of the two alternatives which shall be adopted shall depend upon such circumstances as actual need or capacity and so forth.—(*Nandana.*)

The property of the minor who has no relatives 'the king shall guard 'until he has returned from the teacher's house' on the completion of his study. —(*Rāmachandra.*)

The property belonging to a minor 'the king shall guard' against his relatives.—(*Vivādaratnākara*, p. 598.)

'*Anupālayet*—*i.e.*, not escheat it.—(*Vibhāgasāra*, 17. 1—7.)

136. कात्यायन] प्रोषितस्य तु यो भागो रक्षेयुः सर्व एव तम् ।
बालपुत्रे मृते रिक्थं रक्ष्यं तत्तन्तुबन्धुभिः ।
पौगण्डाः परतस्तत्तु विभजेरन् यथांशतः ॥

If a coparcener has gone abroad, his share shall be guarded by all coparceners. If any one dies leaving minor sons, his property shall be guarded by the relatives of those sons; the minors, subsequently, shall divide the property among themselves in due shares.—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 599.]

NOTES

'*Bālaputra*,'—one who has left a minor son.—'*Pogaṇḍa*,'—too young, inexperienced.—(*Vivādaratnākara*, p. 599.)

CHAPTER IV

Section 1

NATURE OF STRĪDHANA

1. ऋग्वेद 1.109. 2.] अश्रवं हि भूरिदावत्तरा वां विजामातुरुत वाघा स्यालात् ।
अथासोमस्य प्रयती युवाभ्यामिन्द्राग्नीस्तोमं जनयामि नव्यम् ॥

I have heard that ye give wealth more freely than worthless son-in-law or spouse's brother.

So offering to you this draught of Soma, I make you this new hymn, Indra and Agni. (*Ṛgveda*, 1. 109. 2.)

2. मनु 9. 194.] अध्यग्न्यध्यावाहनिकं दत्तं च प्रीतितः स्त्रियै ।
कात्यायन] भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम् ॥

(1) What is given before the fire, (2) what is given at the time of departure, (3) what is given in token of love, what is received, (4) from the brother, (5) the mother, and (6) the father,—*strīdhana* (exclusive property of women) has been declared to be of these six kinds.—(*Manu*, 9. 194.) [Quoted in *Mitākṣarā*, pp. 643, 736; *Vivādaratnākara*, p. 522; *Vivādachintāmaṇi*, p. 215; *Vivādachandra*, 22. 2. 2; 23. 1—6; *Smṛtichandrikā*, p. 651; *Parāsharamādhava*, p. 368; *Dāyabhāga*, p. 72; *Vīramitrodaya*, p. 688; *Vyavahāramayūkha*, p. 152; *Vibhāgasāra*, 9. 2-3.]

NOTES

(1) '*Adhyagni*,'—what is obtained from any person at the time of the marriage-Homa;—(2) customary presents received at the time of going to the husband's house; (3) what is given by the husband at the time of dalliance;—all this is called '*Strīdhana*'; that also is '*Strīdhana*'—which is given to the woman at any time by her brother and other relatives.—(*Sarvajñanārāyaṇa*.)

(1) '*Adhyagni*'—is an indeclinable:—what is given to the girl at the time of marriage, near the fire, by her father and others is called the '*Adhyagni Strīdhana*'; as defined by Kātyāyana—'*Vivāhakāle yat strībhyo, etc.*'—(2) what is obtained by the girl when she is being taken to her husband's house is called the '*Adhyāvāhanika*,' as defined by Kātyāyana

in the text—'*Yat punarlabhate nārī, etc.*'—(3) what is given by the husband on occasions of love making.—(4), (5), (6) and what is given on subsequent occasions by the brother, mother and father.—These are the six kinds of '*Strīdhana*.'—(*Kullūka*.)

'*Adhyagni*' is what is given by the father at the time of marriage, near the fire . . . . What is given by the husband during dalliance and rejoicings and such occasions.—(*Rāghavānanda*.)

(1) '*Adhyagni*' is the property received by the girl from any person near the nuptial fire ; (2) '*Adhyāvāhana*' is *going from the father's to the husband's family* ;—what is obtained at this time of the going is the '*Adhyāvāhanīka*' ; (3) what is given by the husband's parents in token of affection at the time that the girl bows down to them. The meaning is that these six kinds of property are what is the woman's own, whatever else she acquires belongs to her husband.—(*Nandana*.)

(1) '*Adhyagni*' is what is received from any one at the time of the *marriage-homa* ;—(*Rāmachandra*.)

What Manu means by speaking of the '*six kinds*' of *Strīdhana*, is that the number of its varieties cannot be less than *six*, it does not mean that it cannot be more. These have been defined by Kātyāyana.—(*Mitākṣarā*, p. 843.)

'*Adhyagni*,' what is given by any one at the time of marriage ;—'*Adhyāvāhanikam*,' the presents that follow the bride when she is being taken to the bridegroom's house. Medhātithi has described the '*Adhyāvāhanika*' as what has been given to the bride by her father-in-law and others at the time of her being carried back to her father's house from the bridegroom's house ;—this also may be accepted ; as this stands on the same footing as the foregoing one.—'*Dattañcha prītitaḥ*,' what is given by her father-in-law and other relations, through love aroused by her character, virtue and efficiency.—'*Six kinds*' :—this is added for the purpose of precluding the possibility of there being less, not of excluding a larger number ; as we find that there is yet another kind of *Strīdhana*—the *Adhivedanika*—mentioned by Yājñavalkya.—(*Vivādaratnākara*, p. 522.)

The number '*six*' is mentioned for the purpose of showing that the number cannot be less.—These are defined by Kātyāyana.—(*Vivādachintāmaṇi*, p. 216 ; also *Parāsharamādhava*, p. 368; *Vīramitrodaya*, p. 688 ; and *Vyavahāra-mayūkha*, p. 152.)

'*What is received from the brother, etc.*'—at any time during her life, for her maintenance.—(*Smṛtichandrikā*, p. 652.)

'*Adhyagni*'—what is given by any one at the time of marriage is known as '*Adhyagni*' ;—'*Adhyāvāhanikam*'—what is given by any one at the time of the *Dvirāgamana*, (Bride's going to the house of the Bridegroom) ; also known as '*Yautuka*' ;—'*Prītidattam*,'—what is given to the bride by her father-in-law and others at the time of her bowing down to them, which is known as '*Pādavandanika*.'—'*What is given by the mother*,' '*what is given by the father*,' '*what is given by the brother*'; in all these there is no restriction as to time. Thus there are six kinds of *Strīdhana*.—(*Vibhāga-sāra*, 9. 2—4.)

3. कात्यायन] (A) विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ ।
तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥
(B) यत् पुनर्लभते नारी नीयमाना पितुर्गृहात्
[*v.l.*, हि पैतृकात्] ।
अध्यावाहनिकं नाम तत् स्त्रीधनमुदाहृतम् ॥
(C) प्रीत्या दत्तं तु यत्किञ्चित् श्वश्र्वा वा श्वशुरेण वा ।
पादवन्दनिकं यत्तत् [*v.l.*, आधिवेदनिकं चैव]
लावण्यार्जितमुच्यते [*v.l.*, प्रीतिदत्तं तदुच्यते] ॥

(A) What is given to women at the time of marriage, near the fire, has been called by the wise the *Adhyagni-Strīdhana* ;—(B) whatever is obtained by the woman at the time that she is being taken from her father's house has been called the *Adhyāvāhanika-Strīdhana* ;—(C) whatever is given to the woman, through love, by her father-in-law or mother-in-law at the time of her bowing down to their feet is called *Ādhivedanika* or *Lāvaṇyārjita* [*v.l.*, *Prītidatta*] *Strīdhana*.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 715; *Mitākṣarā*, p. 843; *Vivādaratnākara*, p. 524; *Vivādachintāmaṇi*, p. 215; *Vivādachandra*, 23. 2. 1; *Madanapārijāta*, p. 671; *Parāsharamādhava*, pp. 368-369; *Smṛtichandrikā*, p. 651; *Vīramitrodaya*, p. 589; *Vyavahāramayūkha*, p. 153; *Vibhāgasāra*, 9. 2—6; *Dāyanirṇaya*, 10. 2—9; 11. 1—4.]

NOTES

(B) This is the '*Adhyāvāhanika*' as defined by *Kātyāyana*.—(*Vivāda-ratnākara*, p. 524.)

(B) This is what the bride receives from any one at the time of her *Dvirāgamana* (going to her husband's house). (C) '*Lāvaṇya*' here stands for character, efficiency and such qualities. Thus the third kind of *Strīdhana* is that which has been given by the father-in-law and other relations to the bride who is endowed with good character and other good qualities, when she bows down at their feet. The '*Ādhivenika*' is the seventh kind of *Strīdhana*, for which see Yājñavalkya (below).—(*Vivādachintāmaṇi*, pp. 215, 216.)

'*Pādavandanikam*,' given at the time of her bowing down to their feet.—(*Smṛtichandrikā*, p. 652.)

(A)—'*Near the fire*,'—this stands for the whole time of the marriage, from the *Nandi-Shrāddha* down to the final obeisance to the bridegroom. What is got during all this time is called '*Adhyagnika*.'—This same is also called '*Yautuka*' (dowry) which is derived from the root '*yu*' *to intermingle* ; the marriage brings about the *intermingling* of the man and the woman by making their bodies one ; as laid down in the *Shruti* text, which speaks of

"the bones with the bones, the flesh with the flesh, the skin with the skin";—hence what is got at the marriage is rightly called '*Yautuka*' (dowry).—(*Dāyanirṇaya*, 10. 2—9.)—(B) '*Paitṛkāt* (*v.l.*, for '*piturgṛhāt*') means ' from the father's family and from the mother's family.'—(*Dāyanirṇaya*, 11. 1—4.)

4. कात्यायन] (A) ऊढया कन्यया वापि पत्युः पितृगृहेऽथवा ।
भ्रातुः [*v.l.*, भर्तुः] सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतम् ॥

(B) सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते ।
यस्मात्तदानृशंस्यार्थं तैर्दत्तं तत्प्रजीवनम् ॥

(C) सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्तितम् ।
विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि ॥

(D) भर्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः ।
विद्यमाने तु संरक्षेत् क्षपयेत् तत्कुलेऽन्यथा ॥

(A) Whatever is obtained by the married or unmarried girl, at her husband's house or at her father's house, from the brother [*v.l.*, husband] or parents, is called *Saudāyika* (Dowry). (B) After having obtained the *Saudāyika* property, women are free to do what they like with it, since it has been given to them through kindness, as a means of livelihood.—(C) In regard to the *Saudāyika* property, women have been declared to be free to do what they like, as to selling it or giving it away, even with immoveable property.—(D) On the death of her husband, the widow can make use of the property inherited from her husband at her will; and during his lifetime, she should guard it; or otherwise (if three is no property of the husband) she should pass her days in the family of her husband.—(*Kātyāyana*.) [Quoted in *Aparārka*, pp. 751, 752; *Mitākṣarā*, p. 844; *Vivādaratnākara*, pp. 510, 511; *Vivādachintāmaṇi*, pp. 217, 218; *Vivādachandra*, 22. 1—24; *Madanapārijāta*, p. 671; *Smṛtichandrikā*, p. 655; *Parāsharamādhava*, p. 369; *Dāyabhāga*, pp. 73, 76; *Vīramitrodaya*, 690, 691; *Smṛtitattva*, pp. 188, 190; *Vyavahāramayūkha*, p. 155; *Vibhāgasāra*, 9. 2—12.]

The meaning is that what is obtained by the girl, at her father's place or elsewhere, from her brother or parents, is called '*Saudāyika*,' *i.e.*, what has been obtained from such relatives as are *Sudāya* (inheritors of property).—(*Bālambhaṭṭī* on *Mitākṣarā*, p. 844.)

The construction is '*patyuḥ gṛhe—pituṛgṛhe*,' 'at her husband's house or at her father's house.'—'*From her brother or parents*'—this is only by way of example; what is meant is that whatever a married or unmarried girl obtains, at her father's or husband's house, from her mother or father or other relatives is her '*Saudāyika*' property.—*Ānṛshamsya*' is freedom from harshness; in order to save her from harsh treatment, her father or other relatives have provided for her maintenance. Thus in regard to their *Saudāyika* property, including immoveable property, women are free to do what they like. (D) But in regard to what has been given to her by her husband, her freedom lies with property other than the immoveable.—'*Property inherited from the husband*' is of two kinds—(1) that in which the wife's ownership has been created on the husband's death by reason of there being no other person entitled to inherit it, and (2) that in which the wife's ownership is there during the husband's lifetime by virtue of her relationship to him. In regard to the (1) the wife is entitled to do what she likes with all but the immoveable property; in regard to the (2) it is added '*vidyamāne samrakṣet*,'—*i.e.*, she should guard the wealth in due obedience to the husband's wishes.—Such is the explanation according to the *Prakāsha*.—According to Halāyudha and Pārijāta, '*Bhartṛdāya*' is the *Strīdhana* given by the husband. The view of the '*Prakāsha*' is to be accepted.—(*Vivādaratnākara*, pp. 510, 512.)

All the *ten* kinds of *Strīdhana* are included under the name '*Saudāyika*.'—(A) The term '*gṛhe*' is to be construed with '*patyuḥ*' also. '*Sārdham*' is a wrong reading (for '*patyuḥ*.'). '*Brother*' (*v.l.*, husband) is only illustrative; the meaning is that whatever the married or unmarried girl obtains from her father or from other members of his family is called '*Saudāyika*.'—(C) The meaning is that in the matter of the property—moveable as well as immoveable—that she has obtained from her father's family, the woman is free to give it away or otherwise dispose of it.—(D) '*Bhartṛdāya*' is *husband's property*; which, on his death, in the absence of other heirs, passes into the possession of the wife; and which during the husband's lifetime, is owned by the wife only with his permission. In regard to the former, it is said that she can use it as she likes; but this refers to property other than the immoveable.—In regard to the latter it is said that during his lifetime, she is to guard his property.—'*Otherwise*,'—*i.e.*, if there is no property of the husband, the widow should pass her days in her husband's family.—Thus even when the husband's immoveable property passes into the possession of the widow, *she is not entitled* to give or sell it away. Just as in regard to the immoveable property given to her by her husband or inherited by her from him, the widow is not entitled to sell or give it away,—in the same manner she has no right to give or sell that immoveable property of her husband which *has come to her through her son*.—(*Vivādachintāmaṇi*, pp. 216—218.)

(C) In regard to her *Saudāyika* property, the woman is free to do what she likes,—during her husband's lifetime as well as after his death,—

(D) '*Bhartṛdāya*' is what has been given to her by her husband ; in regard to this she is free to do what she likes only after her husband's death ; during his lifetime she is to 'guard' it, *i.e.*, use it only with the husband's permission.—(*Smṛtichandrikā*, pp. 654-655.)

(C) Of the *Saudāyika* immoveable property, a woman may make what use she likes.—(*Dāyabhāga*, p. 76.)—(D) The meaning is that when her husband is dead, the widow can freely make use of the property given to her by her husband ; but during his lifetime, she shall guard it, *i. e.*, she should not be too liberal with it.—(*Ibid.*, p. 74.)

'*Bhartuḥ*' is the reading adopted in the *Kalpataru* and other works.—(*Vīramitrodaya*, p. 690.)

(C) '*Saudāyika*' is what has been obtained from one's *Sudāyas*,—*i. e.*, the father, the mother and the husband's relatives.—(*Smṛtitattva II*, p. 184.—(D) '*As he likes*,'—*i.e.*, for religious purposes.—(*Ibid.*, p. 190.)

(B) and (C) These texts declare the woman's freedom to do what she likes in regard to some kinds of property.—(*Vyavahāramayūkha*, p. 155.)

(C) In regard to her *Saudāyika* immoveable property, the woman is free to do what she likes.—(D) When her husband's property passes into her possession on his death, the widow may make what use of it she likes. But she shall only enjoy it as she likes, she shall not spend it in improper ways.—(*Vivādachandra*, 22. 1-2, 4.)

(A) This sums up in brief the definition of '*Saudāyika*' as anything that a woman has received, before and after marriage from her father and husband's family.—(*Vibhāgasāra*, 10. 1.1.)—From all these texts of *Kātyāyana* it is clear that in regard to immoveable property also, the woman is free to give or sell it ; but in regard to what she has received from her husband, she has this freedom only so far as moveable property is concerned ; it does not extend to immoveable property ; as has been declared in the text '*Bhartrā prītena yaddattam, etc.*'—(*Vibhāgasāra*, 10. 1—5.)—(D) During the husband's lifetime she shall 'guard the wealth,' as she has no absolute right over it.—(*Ibid.*, 10. 1. 1.)

5. व्यास] यत् कन्यया विवाहे च विवाहात् परतश्च यत् ।
पितृभर्तृगृहात् प्राप्तं धनं सौदायिकं स्मृतम् ॥

Whatever property has been obtained by the girl, at marriage or after marriage, from the house of her father and of her husband, has been declared to be '*Saudāyika*.'- (*Vyāsa.*) [Quoted in *Aparārka*, p. 751 ; *Smṛtichandrikā*, p. 655]

NOTES

What is meant by this text and the text of Kātyāyana—'*ūḍhayā kanyayā vāpi, etc.*,' is that since her betrothal till the formalities ending with her entry into her husband's house, whatever dowry and other gifts are obtained by the girl in her father's house or her husband's house and from her paternal and maternal relations, is called by the name '*Saudāyika*.'—(*Smṛtichandrikā*, p. 655.)

6. कात्यायन] विवाहात् परतो यत्तु लब्धं भर्तृकुलात् स्त्रिया ।
अन्वाधेयं तदुक्तं तु लब्धं बन्धुकुलात्तथा ॥
भर्तुः पित्रोः सकाशाद्वा अन्वाधेयं तु तद् भृगुः ॥

What has been obtained by the woman after her marriage, from her husband's family or from the family of her relations is called '*Anvādhēya*'; that also is *Anvādhēya*, according to Bhṛgu, which has been obtained from the husband or from the parents.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 752; *Mitākṣarā*, p. 845; *Vivādaratnākara*, p. 524; *Vivādachintāmaṇi*, p. 216; *Vivādachandra*, 23. 1—9; *Madanapārijāta*, p. 671; *Smṛtichandrikā*, p. 660; *Parāsharamādhava*, p. 369; *Dāyabhāga*, pp. 71-72; *Vīramitrodaya*, p. 689; *Vyavahāramayūkha*, p. 153; *Vibhāgasāra*, 9. 2—12.]

NOTES

'*This is held to be Strīdhana*,'—this has to be added.—(*Mitākṣarā*, p. 845.)

Thus there are *ten* kinds of *Strīdhana*.—(*Vivādachintāmaṇi*, p. 216.)

'*After marriage*,'—this brings out the significance of the proposition '*anu*' in the name '*Anvādheya*'; '*obtained*' is what is expressed by the term '*ādhēya*' contained in that name.—(*Smṛtichandrikā*, p. 660.)

The term '*bandhu*' stands for the father and mother. Thus the meaning is that what is obtained after her marriage from her paternal and maternal relations, and from her husband and her husband's relations—such as her father-in-law and the rest,—is called '*Anvādhēya*.'—(*Dāyabhāga*, pp. 71-72.)

Thus there are *ten* kinds of *Strīdhana*; all this is what constitutes the '*Saudāyika*' property of women. This is what Kātyāyana has declared in the text '*Uḍhayā kanyayā vāpi, etc.*,' which sums up the definition of the *Saudāyika* as anything that a woman has received before and after her marriage from the father's and the husband's family.—(*Vibhāgasāra*, 10. 1. 1.)

7. याज्ञवल्क्य 2. 144-145.] पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् ।
आधिवेदनिकं चैव [*v.l.*, काद्यं च] स्त्रीधनं परिकीर्तितम् ।
बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च ।

What is given by the father, mother, husband and brother,—what is obtained in the presence of the fire,—what is given on account of supersession, and so forth—has been

declared to be *Strīdhana*, 'woman's property';—as also what has been given by relatives, the nuptial fee and the marriage presents.—(*Yājñavalkya*, 2. 144-145.) [Quoted in *Vivādaratnākara*, p 523; *Madanapārijāta*, p. 670; *Smṛtichandrikā*, p 652; *Parāsharamādhava*, p. 368; *Dāyabhāga*, p. 75; *Vīramitrodaya*, p. 688; *Vyavahāramayūkha*, p. 152]

NOTES

'*Adhyagnyupāgatam*,'—obtained at the time of marriage;—'*Ādhivedanikam*,' that which is given to a wife who has been 'superseded,' or what is given for the purpose of supersession. The particle '*cha*' includes *ornaments* and such things, mentioned in other Smṛti-texts. All this is to be understood to be '*Strīdhana*.'—(Vishvarūpa takes the third line separately along with the second line of verse 145.)

'*Adhyagni*,'—what is given by the father and others and is received at the time of marriage, in the presence of the fire.—'*Ādhivedanikam*' is what is given on account of '*Ādhivedana*,' 'supersession,' which means the marrying of another wife while the former wife is still alive The particle '*cha*' stands for '*ādi*,' *etc.*; so that the other kinds of woman's property become included,—such for instance as those mentioned in the following texts—(*a*) 'The wives should be made equal sharers with the sons,' (*b*) 'The mother also shall take an equal share,' 'the fourth part of the share of the mother, etc.,'—as also other kinds of property belonging to women which have been described by Manu and others as '*Strīdhana*.'—(*Aparārka*, who takes the third line separately, with the second line of the next verse; '*Bandhudatta*' is what is given by the paternal or maternal uncle and others.)

(*a*) What has been given by the father, mother, husband and brother,—(*b*) what has been given by the maternal uncle and others at the time of marriage, in the presence of the fire,—(*c*) what is given on account of 'supersession,'—as mentioned in Yājñavalkya's text (2. 148)—'*Adhivinnastriyai dadyāt, etc.*'—The term '*ādya*' [*v.l.*, for '*chaiva*'] stands for properties acquired by inheritance, purchase and other recognised means.—All this has been declared by Manu and others to be '*Strīdhana*,' 'woman's property.'—The term '*Strīdhana*' is used in its etymological sense, not in any technical sense; so long as a word can be taken in its etymological sense, it is not right to impose upon it a technical signification.—When Manu enumerates the '*six kinds*' of *Strīdhana*, all that is meant is that the number of varieties cannot be less than six, not that it cannot be more The exact definition of '*Adhyagni*' and the rest has been provided by Kātyāyana. '*Bandhudattam*' is what is given by the girl's paternal and maternal relations;—'*Shulka*' is that fee on payment of which the girl is given away; '*Anvādheyaka*' are gifts received after marriage;—all this also is *Strīdhana*.—(*Mitākṣarā*.)

'*Adhyagnyupāgatam*'—given by the maternal uncle and others near the fire, at the time of marriage. '*Ādhivedanikam*' is what is given on account of supersession.—The term '*ādya*' is meant to include property acquired by purchase and other means.—(*Madanapārijāta*, pp. 670-671.)

'*Ādya*' has been added for the purpose of including properties other than those here mentioned.—(*Smṛtichandrikā*, p. 652.)

What is given through love by the father (mother, husband and brother),—'*Adhyagni*,' what has been obtained from strangers (non-relations) at the time of marriage, in the presence of the fire,—'*Ādhivedanikam*,' described later on as what is given to a superseded wife,—what is given, through love, by relations, such as the maternal uncle and rest,—'*Shulkam*,' the fee settled between the parents and others as to be given to the bride and the bridegroom,—and '*Anvādheyākam*,' described by Kātyāyana as 'what is obtained by the girl, after marriage, from her husband's and her father's family';—all this is called '*Strīdhana*' or '*Saudāyika*.'—The term '*Ādya*' serves to include what passes to the woman on the death of her husband,—and the particle '*cha*' to include the clothes, ornaments and other things possessed by the woman;—and '*eva*' serves to exclude what belonged to her husband individually (?)—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

'*Adhyagnyupāgatam*' is what is given by the maternal uncle and others at the time of marriage.—'*Ādhivedanikam*,' what is given to the superseded wife on account of the supersession. The term '*Ādya*' includes the *Adhyāvāhanikam* (what is given to the girl at the time of her going to her husband's house), and also such property as is acquired by her through inheritance, purchase and other means.—(*Parāsharamādhava*, p. 368.)

'*Ādhivedanika*' is the solatium that is given to the former wife by one who is going to marry a second wife.—(*Dāyabhāga*, p. 75.)

8. याज्ञवल्क्य 2. 148.] अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समम् ।
न दत्तं स्त्रीधनं यस्यै—दत्ते त्वर्धं प्रकल्पयेत् ॥

To the superseded wife one should give an equal amount as compensation for supersession, if she has not already been given her *Strīdhana*; in case this latter has been given, she is to receive only half.—(*Yājñavalkya*, 2. 148.) [Quoted in *Vivādaratnākara*, p. 523; *Vivādachintāmaṇi*, p. 216; *Vivādachandra*, 23. 1—8; *Madanapārijāta*, p. 670; *Vīramitrodaya*, p. 690; *Smṛtitattva II*, p. 166; *Vyavahāramayūkha*, p. 153; *Vibhāgasāra*, 9. 2—8; *Dāyanirṇaya*, 16. 2—9.]

NOTES

See II, 349.

While one wife is living, if a man marries another, the former is 'superseded'; she is to be given something by reason of her being superseded; and this is to be an '*equal amount*';—equal to what?—equal to what is given to the newly wedded wife.—But this is to be given to that wife to whom no *Strīdhana* has been given. If the *Strīdhana* has been given to her, then she is to receive only

'*half*,' not an equal amount. The term '*ardha*,' 'half,' here does not mean exactly one of two equal parts: what is to be given is that which, along with the *Strīdhana* already given would make up an amount equal to what has been given to the newly wedded wife.—(*Aparārka*.)

The wife over whose head the husband has married a second wife should be given an amount equal to what has been spent in the second marriage; if *Strīdhana* has not been previously given to her. If *Strīdhana* has been given, then only half shall be given to her.—This has to be given only in case where there has been 'supersession' without sufficient reason.—(*Vishvarūpa*.)

That wife is said to be 'superseded' over whose head the husband marries again;—to such a wife should be given, on account of the supersession, an amount '*equal*' to what has been spent over the second marriage; but only to the woman to whom either her husband or father-in-law has not given her *Strīdhana*. If this has been given, then only half shall be given. The term 'half' does not mean 'one of two equal parts,'—what is meant is that she shall receive an amount which, along with the *Strīdhana* already received by her, makes up the amount spent over the second marriage.—(*Mitākṣarā*.)

This text explains what is meant by the *Strīdhana* called '*Ādhivedanika*.' —If a woman has been made to have a co-wife, she shall receive, an account of the husband having brought in her co-wife, an amount equal to what has been given to the newly wedded wife;—if the superseded wife has not been given her *Strīdhana*. In case the *Strīdhana* has been given to her previously, she should receive only half of what has been given to the newly wedded wife.—(*Vīramitrodaya-Ṭīka* on *Yājñavalkya*.)

She is called 'superseded' over whose head the second marriage has taken place.—(*Vivādaratnākara*, p. 523.)

If the husband marries a second time, his first wife becomes 'superseded'; what is given to her at the time of this supersession is called '*Ādhivedanika*.'—(*Vivāduchintāmaṇi*, p. 216.)

That wife is called 'superseded' over whose head her husband has married a second time.—(*Vivādachandra*, 23. 1–8.)

That wife is 'superseded' over whose head the husband has married again; —to such a wife shall be given, on account of her supersession, ornaments and other things, equal to what has been given to the second wife.—A condition is added—'*if Strīdhana has not been given to her*.'—(*Madanapārijāta*, pp. 670-671.)

'*Ādhivedanika*' is what is given to the first wife at the time of marrying the second wife.—(*Vīramitrodaya*, p. 690.)

This is cited as lending support of the view that, if the wife has got her *Strīdhana*, she shall be given only half the share given to the son.—(*Smṛtitattva II*, p. 166.)

'*Ardha*,' 'half,' here stands for that amount which makes the total amount received by the superseded wife equal to that given to the second wife.—(*Vyavahāramayūkha*, p. 153.)

'*Ādhivedanika*' is what is given by the husband to his first wife at the time of her supersession (by a new wife).—(*Vibhāgasara*, 9. 2–9.)

Though this mentions the 'superseded' woman, yet it applies to all those women who have received no *Strīdhana*,—say *Dāyabhāga* and others.—(*Dāyanirṇaya*, 18. 2—10.)

9 नारद 13. 8.] अध्यग्न्यध्यावाहनिकं भर्तृदायस्तथैव च ।
भ्रातृदत्तं पितृभ्यां च षड्विधं स्त्रीधनं स्मृतम् ॥

What is given before the nuptial fire, what is given at the time of the bride's going to her husband's place, the husband's gift, and what is given by the brother and the parents,—these are the six kinds of *Strīdhana*.—(*Nārada*, 13. 8.) [Quoted in *Vivādaratnākara*, pp. 523-524; *Vīramitrodaya*, p. 688; *Dāyanirṇaya*, 10. 2—8.]

NOTES

This also is not meant to exclude other kinds of *Strīdhana*.—(*Vivādaratnākara*, p. 524.)

[See Sec. 3 above for the definition of these technical terms.]

'*Bhartṛdāya*'—stands for *what is given by the husband*, not *what is inherited from the husband*.—(*Dāyanirṇaya*, 11. 1—5.)

10. विष्णु 17. 18.] पितृमातृसुहृद् [*v.l.*, सुत] भ्रातृदत्तमध्यग्न्यु-
पागतम् आधिवेदनिकं बन्धुदत्तं शुल्कान्वाधेयकमिति
स्त्रीधनम् ।

What has been given by the father, mother, friends, [*v.l.*, sons] and brothers,—what has been received in presence of the nuptial fire,—what is received on supersession,—what is given by relatives,—the fee,—and marriage presents; these constitute *Strīdhana*, 'woman's property.'—(*Viṣṇu*, 17. 18.) [Quoted in *Vivādaratnākara*, p. 523; *Vivādachintāmaṇi*, p. 216; *Vivādachandra*, 23. 1-7; 23. 1—8 to 9; *Smṛtichandrikā*, p. 652; *Dāyabhāga*, p. 71; *Vīramitrodaya*, p. 688; *Vibhāgasāra*, 9. 2--10.]

NOTES

What is meant by '*shulka*' has been thus defined by Kātyāyana;—'*Shulka* has been declared to be the price that is received for household utensils, conveyances, milch cattle, ornaments and servants,—*i.e.*, what the woman has received from the master of the house for these procuring of the utensils and other things'—(*Vivādachintāmaṇi*, p. 216.)

The term '*bandhu*' here stands for relations other than the father and others mentioned in the first line. '*Shulka*' and '*Anvādheyaka*' have been defined by Kātyāyana in the texts—(a) '*Gṛhopaskaravāhyānām, etc.*' and '*Vivahāt parato yat tu, etc.*'—(*Smṛtichandrikā*, p. 652.)

11. देवल] (A) वृत्ति [*v.l.*, वृद्धि] राभरणं शुल्कं लाभश्च स्त्रीधनं भवेत् ।
भोक्त्री तत् स्वयमेवेदं पतिर्नार्हत्यनापदि ॥
(B) वृथामोक्षे [*v.l.*, दाने] च भोगे च स्त्रियै दद्यात् सवृद्धिकम् ।
पुत्रार्तिहरणे वापि स्त्रीधनं भोक्तुमर्हति ॥
(C) तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्वकम् ।
मूलमेव स दाप्यः स्यात् यदा स धनभाग् भवेत् ॥

(A) Property given for maintenance, ornaments, fee, and gifts—these would be the '*woman's property*'; the woman herself alone can enjoy this and the husband is not entitled to spend it, except in times of distress. (B) In case he spends anything frivolously or enjoys it, he should repay it to the woman with interest; but for the curing of the son's troubles, he can make use of the woman's property. (C) If he spends the money with her permission and in a loving manner, then he should be made to repay only the principal when he comes by property of his own—(*Devala.*) [Quoted in *Aparārka*, p. 755; *Vivādaratnākara*, pp. 512, 524; *Vivādachintāmaṇi*, pp. 219-220; *Vivādachandra*, 22. 1—10; *Smṛtichandrikā*, p. 657; *Parāsharamādhava*, p. 375; *Dāyabhāga*, p. 75; *Vīramitrodaya*, p. 693; *Vyavahāramayūkha*, p. 156; *Vibhāgasāra*, 10. 2—10.]

NOTES

(B) '*Vṛthāmokṣa*,'—spending money over gambling, singing and so forth;—'*bhoga*' is enjoyment of women, foods and drinks and such other things.—For the curing of the son's troubles, one may make use of the 'woman's property.'—(*Aparārka*, p. 755.)

(A) '*Vṛtti*,' property given for her maintenance; '*lābha*,' gifts received from relations;—'*shulka*,' wealth given to a maiden by one who seeks marriage with her.—(B) If one obtains money from his wife on the pretext of some urgent business, but spends it in making frivolous gifts and enjoyments, he should refund it to her along with interest. For the curing of the troubles of his son, however, the man may spend the 'woman's property' even without her consent.—(*Vivādaratnākara*, pp. 512-513.)

(A) '*Vṛtti*,' the property given to the woman for her maintenance;—'*ābharaṇa*,' ornament;—'*shulka*,' fee paid to the girl by one seeking marriage;—'*lābha*,' gifts received from relations;—all this is the 'woman's property'—Without the woman's consent one should not make frivolous gifts or enjoy her property; but this may be done for helping the son.—(C) Even in times other than those of distress, he may use her property with her permission.—(*Vivādachintāmaṇi*, pp. 219–220.)

The woman's maintenance-property also is her '*strīdhana*,' of which she is free to do what she likes. (B) '*Vṛthāmokṣa*' is making frivolous gifts;—'*lābha*' is gift received from relations; (A) '*Vṛtti*,' property given for maintenance;—'*shulka*' what is given to the maiden with a view to marrying her.—For the purpose of the treatment of the son's disease the 'woman's property' may be used even without her consent.—(*Vivādachandra*, 22. 1–10.)

(A) '*Vṛtti*,'—property given by her father for her maintenance; '*lābha*' is what is earned, *i.e.*, what the woman receives in connection with the fast and other observances that she keeps for propitiating the Goddess Pārvati is also her '*strīdhana*.'—'*Svayameva*,' '*herself*,' serves to exclude her children,—the exclusion of the husband being specially emphasised in the sentence '*the husband is not entitled*'; of course with the exclusion of the husband, the brother and other remoter relations become naturally excluded.—'*Vṛthā*' without necessity, *i.e.*, in normal times;—'*mokṣa*,' expenditure.—What is stated here refers to cases where the expenditure has been incurred simply without the woman's consent, but not with the employment of force; as the only retribution mentioned is the repayment with interest, without any penalties.—The sentence '*the husband is not entitled except in times of distress*' implies that in times of distress, the husband alone, and no one else, is entitled to spend. It is to this end that we have the fourth line, where the 'husband' is the nominative understood of the verb '*arhati*.'—'*Son*' stands for all members of the family.—'*Ārti*' stands here for such trouble as cannot be got over without the expenditure of wealth; for the removable of such troubles and in times of great distress, the husband is entitled to enjoy and to spend the wife's property even without her consent.—(*Smṛtichandrikā*, p. 657.)

'*Vṛddhi*' (*v.l.*, for '*vṛtti*') is property given for her upbringing; '*Vṛtti*' is what is given by the father and others for her maintenance.—'*Lābha*,' is what is obtained from somewhere for the purpose of propitiating the Goddess Gaurī.—'*Vṛthā*,' in normal times, without much need;—'*mokṣa*,' spending, giving away.—This refers to enjoying and giving away without the wife's consent. If done with her consent, then there is nothing wrong in it, even when done in normal times. [The rest of the *Smṛtichandrikā* is reproduced.]—(*Vīramitrodaya*, p. 693.)

'*Vṛtti*,' property given to her by her father and others for her maintenance.—'*Lābha*,' interest earned.—'*Mokṣa*,' spending, *i.e.*, giving away.—The term '*son*' stands for all members of the family.—(*Vyavahāramayūkha*, p. 156.)

(A) The sense is that in times of distress the husband should certainly use the property.—(B) But he is forbidden to use it in making frivolous

gifts or to partition it. But even the giving and the partitioning may be done for curing the ills of the sons.—(C) With her consent he can take the property even apart from times of distress; and if he has the means to do it, he should repay to her the principal only.—(*Vibhāgasāra*, 10. 2—8.)

12. कात्यायन] पितृमातृपतिभ्रातृज्ञातिभिः स्त्रीधनं स्त्रियै ।
यथाशक्त्या द्विसाहस्रात् दातव्यं स्थावरादृते ॥

To the best of their power *Stridhana* up to the limit of 2,000 (*paṇas*) should be provided by the father, mother, husband, brother and relations; but no immoveable property shall be given.—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 652; *Parāsharamādhava*, p. 369; *Vīramitrodaya*, pp. 690—691; *Vyavahāramayūkha*, p. 154.]

NOTES

The meaning is that 'to the best of their power they should provide the woman with *Strīdhana* to the extent of 2,000 *Paṇas*,—but no immoveable property.'—(*Smṛtichandrika*, p. 369.)

To the best of their power, they should provide her with wealth up to 2,000 *Paṇas*, per year. If a single donation were to be made only once for several years, then the limit could not be only 2,000.—Nor is the immoveable property entirely precluded; as Bṛhaspati has declared that 'Either enough money should be given to her or a piece of land if she so wish it.' [See below]—(*Parāsharamādhava*, p. 369)

The meaning is that to the best of their power they should pay her up to 2,000 *Paṇas*, but no immoveable property shall be given.—(*Vīramitrodaya*, p. 521.)

According to Madana, the meaning is that moveable property to the extent of 2,000 *Paṇas* should be provided for her.—(*Vyavahāramayūkha*, p. 154.)

13. बृहस्पति] दद्याद्धनं च पर्याप्तं क्षेत्रांशं वा यदीच्छति ।

One should provide sufficient money, or a piece of land if she so wishes it.—(*Bṛhaspati*.) [Quoted in *Parāsharamādhava*, p. 369.)

NOTES

This means that immoveable property is not entirely precluded from the *Strīdhana* provided.—(*Parāsharamādhava*, p. 369.)

14. व्यास] द्विसहस्रपणो [*v.l.*, द्विसाहस्रपरो] दायः स्त्रियै देयो धनस्य तु ।
यच्च भर्त्रा धनं दत्तं सा यथाकाममश्नुयात् ॥

Property to the extent of 2,000 *Paṇas* [*v. l.*, 2,000] should be given to the wife; the property that the husband has given her, she may enjoy as she likes.—(*Vyāsa.*) [Quoted in *Aparārka*, p. 752; *Vivādaratnākara*, p. 510; *Vivādachandra*, 2. 1—9; *Smṛtichandrikā*, p. 653; *Dāyabhāga*, p. 74; *Vīramitrodaya*, p. 691; *Vyavahāramayūkha*, p. 154.]

NOTES

The highest amount that should be given to a woman out of the property is a sum of 2,000 *Paṇas* per annum. This property provided by her husband she may enjoy in any irreproachable manner that she likes, without the consent of her brother-in-law and other relations. From this it follows that for receiving or spending anything more than that, she should obtain the permission of the brother-in-law and others.—(*Aparārka*, p. 752.)

The property to be provided should be one of which the highest limit is 2,000 *Paṇas*. If the property of the husband is small, the provision made for the wife shall be small. They say that this restriction refers to the provision that would be made out of the property held by the husband jointly with others. According to the *Prakāsha*, however, this refers to the wives of those who are incompetent, who are separated and yet have to be maintained; and these shall not be given more than 2,000 (*Vivādaratnākara*, p. 510.)

'*Dvisahasrapaṇa*' is that property of which the measure is 2,000 *Paṇas*. If the main property is small, the provision shall necessarily be smaller. The implication is that if the husband gives her more than this, she will not be free to do what she likes with it.—(*Vivādachandra*, 22. 1—9.)

What is meant is that even a rich man should not provide more than 2,000 *Kārṣāpaṇas* for the maintenance of his wife; this amount is to be given annually, year after year. This limitation cannot apply to a case where provision is made in a single lump sum for several years. Nor is immoveable property entirely preceluded—(*Smṛtichandrikā*, p. 653.)

2,000 *Paṇas* is the utmost that should be given to the woman, no more,—by whom?—by the husband.—(*Dāyabhāga*, p. 74.)

From this text, and from that of Kātyāyana it follows that more than 2,000 shall not be given, even when the husband is rich. This limitation applies to cases where the payment has to be made year after year; so that there would be nothing wrong in providing a large amount if it were meant to be a lump payment towards maintenance for several years; because a single lump sum of 2,000 would not suffice for 'lifelong maintenance' and it is this maintenance that has to be provided for.—(*Vīramitrodaya*, p. 691.)

This limit of 2,000 *Paṇas* applies to annual payments. If the provision is intended to be for several years, then even more may be given—and even immoveable property may be given,—to the best of the husband's capacity.—(*Vyavahāramayūkha*, p. 854.)

15. कात्यायन] गृहोपस्करवाह्यानां दोह्याभरणकर्मिणाम् ।
मूल्यं लब्धं च यत् किञ्चित् शुल्कं तत् परिकीर्त्तितम् ॥

The price that is paid (to the wife) for taking work out of the workers working at the house, the utensils, the draught cattle, the milch cattle, and ornaments, is called *Shulka*.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 752; *Vivādaratnākara*, p. 525; *Vivādachandra*, 23. 1—10; *Parāsharamādhava*, p. 369; *Vibhāgasāra*, 9. 2—11.]

NOTES

The meaning is that '*Shulka*' is the money that is given to the woman as a bribe for taking work out of the men working at the house and other things mentioned.—(*Vivādaratnākara*, 525.)

The '*Shulka*' is defined here.—(*Vibhāgasāra*, 9. 2—11.)

16. निघण्टु] यद् वधूवरयोर्दत्तं युतयोर्यौतकं धनम् ।

Anything that is given to the bride and bridegroom joined together is called '*Yautaka*.'—(*Nighaṇṭu*.) [Quoted in *Smṛtichandrikā*, p. 662.]

NOTES

Any property that is given to the bride and the bridegroom together, is called '*Yautaka*,' so called because it belongs to the two *joined together* '*yuta*.'—(*Smṛtichandrikā*, p. 662.)

17. आपस्तम्ब] परीभाण्डं च गृहेऽलङ्कारो भार्यायाः । ज्ञातिधनं चेत्येके ।

The household implements and the ornaments belong to the wife; also the property of the relatives, according to some. —(*Āpastamba*, 2. 14—9.) [Quoted in *Mitākṣarā*, p. 618; *Madanapārijāta*, p. 663; *Vivādaratnākara*, p. 509; *Vivādachintāmaṇi*, p. 217.]

NOTES

'*Household implements*'—such as the stone-slab, the pestle, the mortar, the winnowing basket and so forth,—these are called '*Parībhāṇḍa*.'—(*Madanapārijāta*, p. 663.)

'*Jñātidhanam*,'—such portion of the property as may have been given to her as the marriage-portion.—(*Vivādaratnākara*, p. 509.)

'*Jñātidhanam*,'—such parts of the property as she receives at the time of marriage and other occasions from the family of her father or husband.—(*Vivādachintāmaṇi*, p. 217.)

18. मनु 9. 200.] पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत् ।
विष्णु न तं भजेरन् दायादा भजमानाः पतन्ति ते ॥

The heirs shall not take the ornament that may have been worn by a woman during her husband's lifetime; they become degraded if they do take it.—(*Manu*, 9. 200; and *Viṣṇu*.) [Quoted in *Aparārka*, p. 752; *Mitākṣarā*, p. 869; *Vivādaratnākara*, p. 509; *Vivādachintāmaṇi*, p. 217; *Smṛtichandrikā*, p. 659; *Smṛtitattva II*, p. 184; *Vyavahāramayūkha*, p. 156; *Vibhāgasāra*, 10. 1—4; *Dāyanirṇaya*, 21. 1—7.]

NOTES

See also under I, 99.

During the lifetime whatever ornament may have been worn by the woman,—or what may have been given to her for her adornment,—this the sons shall not take so long as she is alive; they should certainly take it after her death.—(*Sarvajñanārāyaṇa*.)

If any ornament has been worn by the wives loved by the father during their husband's lifetime, the sons shall not take it when they are dividing the father's property among themselves after his death; if they take it, they incur sin.—(*Kullūka*.)

If something has been given to a woman by her husband for her ornaments—if her brothers-in-law and others divide that among themselves they incur sin.—(*Rāghavānanda*.)

Inasmuch as 'ornaments' have not been included under the enumeration of '*Strīdhana*,' and as being included in he husband's property, they would be liable to go to his heirs,—it becomes necessary to make an exception, which is what is done in the present text.—(*Nandana*.)

'*Dāyādāḥ*,'—sons; '*tam*,' the ornament; '*te*,' the sons.—(*Rāmachandra*.)

This refers to such ornaments as may have been worn constantly.—(*Aparārka*, p. 752.)

The *Prakāsha* says that, according to Medhātithi, even though the ornament may not have been actually given to her, if she has worn it with her husband's permission, it should not be taken away from her by the coparceners.—(*Vivādaratnākara*, p. 509.)

According to *Medhātithi* the ornament becomes the 'woman's property' if she has worn it with her husband's permission, even though it has not been given to her by him.—(*Vivādachintāmaṇi*, p. 218; also *Smṛtitattva II*, p. 184.)

'*Worn*,'—*i.e.*, constantly; if the ornament has been worn by her constantly, it shows that there is no trick or fraud in it, and hence it becomes certain that the thing is the woman's own *Strīdhana*.—'*Dāyādāḥ*,'—the daughter and other heirs.—(*Smṛtichandrikā*, p. 659.)

'*Dhṛtaḥ*'—given to her by her husband and others, and worn by her.—(*Vyavahāramayūkha*, p. 156.)

'*Worn*'—with her husband's permission.—(*Vibhāgasāra*, 10. 1—4.)

The opinion of *Mishra* (*Vivādachintāmaṇi* above) is not favoured by the followers of *Dāyabhāga*.—(*Dāyanirṇaya*, 21. 1—7.)

19. व्यास] असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः ।
पितामह्यश्च सर्वास्ता मातृतुल्याः प्रकीर्तिताः ॥

The sonless wives of the father have been declared to be entitled to equal shares; so also have all the paternal grandmothers been declared to be equal to mothers.—(*Vyāsa.*)

NOTES

See III, 34 and III, 344.

20. कात्यायन—व्यास] विवाहकाले यत् किञ्चित् वरायोद्दिश्य दीयते ।
कन्यायास्तद्धनं सर्वमविभाज्यं च बन्धुभिः ॥

Whatever is given to the bridegroom at the time of marriage has been declared to be the property of the girl, and all that is not to be partitioned by his relatives.—(*Kātyāyana.*)

NOTES

See I, 78.

21. प्रामाणिकं वचनम्] यद्दत्तं दुहितुः पत्ये स्त्रियमेव तदन्वियात् ।
मृते जीवति वा पत्यौ तदपत्यम्मृते स्त्रियाः ॥

Whatever has been given to the daughter's husband goes to the woman during the husband's lifetime as well as after his death; on the death of the woman, it goes to her children.—(*An authoritative text.*) [Quoted in *Dāyabhāga*, p. 75.]

NOTES

Here it is not specified that the gift should have been made *at the time of marriage*. But the intention of the giver (that it should go to the daughter) is implied by the declaration that the property shall go to the daughter's children.—(*Dāyabhāga*, p. 75.)

22. कात्यायन] अपुत्रा शयनं भर्तुः पालयन्ती गुरौ स्थिता ।
भुञ्जीतामरणात् क्षान्ता दायादा ऊर्ध्वमाप्नुयुः ॥

The sonless widow, faithful to her husband's bed and living with her elders, shall patiently enjoy (the property) till her death; after her, the heirs shall receive it.—(*Kātyāyana.*)

NOTES

See III, 29.

23. कात्यायन] प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः ।
भर्तुः स्वाम्यं भवेत्तत्र शेषं तु स्त्रीधनं भवेत् (*v.l.*, स्मृतम्) ॥

The wealth that the woman may have acquired by means of her arts, and whatever she may have obtained from others in token of affection, all this would be the property of her husband; the rest has been declared to be her *Strīdhana.*—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 524; *Vivādachandra*, 23. 2. 2; *Smṛtichandrikā*, p. 654; *Pārāsharamādhava*, p. 370; *Dāyabhāga*, p. 76; *Vīramitrodaya*, p. 689; *Smṛtitattva II*, p. 184; *Vyavahāramayūkha*, p. 154; *Dāyanirṇaya*, 5. 1-6.]

NOTES

Apart from what has been specifically declared to be '*Strīdhana*,' 'woman's property,' anything else that the woman may acquire shall be the property of her husband.—(*Vivādaratnākara*, p. 524.)

Apart from what has been declared to be her *Strīdhana*, if a woman acquires by means of her efficiency in singing and such arts, or by trade, spinning, and such means,—and if she receives gifts from others,—all this belongs to her husband.—(*Vivādachandra*, 23. 2. 2.)

'*From others*,'—from her *friends* and such persons; what is obtained from the father and other relatives has been already included under '*Strīdhana*.'—(*Smṛtichandrikā*, p. 654.)

'*From others*,'—*i.e.*, from sources other than her father, mother, husband or their families; and what has been acquired by her by her arts;—this belongs to her husband, *i.e.*, he is free to do what he likes with it; he can take it even apart from any abnormal times of distress. Hence such property, even though the woman's, is not her '*Strīdhana*,' as she is not free to do what she likes with it.—(*Dāyabhāga*, p. 76; *Smṛtitattva II*, *p.* 184.)

What is meant is that it is the husband, not the wife, who is free to make use of such property.—(*Vīramitrodaya*, p. 589.)

'*From others*,'—*i.e.*, from persons belonging to families other than those of her husband, father and mother.—'*Of the husband*'—*alone*, not of any other person. Property other than these two kinds is her '*Strīdhana*.'—(*Dāyanirṇaya*, 5. 1—6.)

24. मनु 9. 199.] कन निर्हारं स्त्रियः कुर्युः कुटुम्बाद् बहुमध्यगात् ।
स्वकादपि च वित्ताद्धि स्वस्य भर्तुरनाज्ञया ॥

Women shall not make a withdrawal [or hoard] out of the family-property common to many, nor out of their own property, without the husband's permission.—(*Manu*, 9. 199.) [Quoted in *Vivādaratnākara*, p. 509; *Vivādachandra*, 22. 1–5; *Smṛtichandrikā*, p 654; *Vīramitrodaya*, p. 691; *Vyavahāra-mayūkha*, p. 154.]

NOTES

'*Withdrawal*'—means *withdrawing* and *spending*.—'*Family-property*,'—*i.e.*, that which is for the maintenance of the family;—'*common to many*,'—which belongs to several persons;—'*their own property*,' what belongs to themselves entirely, but which is not included in their '*strīdhana*.' They shall not incur any expenditure without their husband's permission.—(*Sarvajñanārāyaṇa*.)

Out of the property which is common to the whole family consisting of the brother and others—the wife and other women shall not make a 'hoard' for the purpose of getting ornaments and other things for themselves; nor out of their husband's own property, without his permission. Hence all this is not their '*strīdhana*.'—(*Kullūka*.)

'*Nirhāram*'—hoarding for the purpose of getting ornaments and such things for themselves.—'*Bahumadhyagāt*,' which belongs in common to their brother-in-law and others. Nor even out of their husband's own property, without the permission of the husband.—(*Rāghavānanda*.)

'*Bahumadhyagāt*,' what is to be enjoyed by several persons;—'*Kuṭumbāt*,' the husband's property which is for the purpose of the family,—they shall not make any expenditure without the permission of their husband;—nor out of their own property.—(*Nandana*.)

Out of the undivided family-property—women shall not make any expenditure without their husband's permission.—(*Rāmachandra*.)

The term '*kuṭumba*' here stands for the *family-property*. The meaning thus is that out of the common property belonging to several persons, women shall not make any withdrawal without the permission of the owners of the property; so also '*out of their own property*,' *i.e.*, out of the property that belongs specifically to their own husband, as apart from the joint property belonging to several persons,—women should not make any withdrawal without the permission of their husband.—(*Vivādaratnākara*, p. 509.)

Being dependent upon others, a woman should not make gifts or other use of either the property that is common between the husband and wife or the property that belongs to the woman herself. Or this may be taken as referring to such property as may be acquired by the woman by means of arts and crafts.—(*Smṛtichandrikā*, p. 654.)

'*Nirhāra*' is expenditure.—(*Vīramitrodaya*, p. 691 ; also *Vyavahāramayūkha*, p. 155.)

25. कात्यायन] यत्तु सोपाधिकं [*v.l.*, तत्रसोपधि यत्] दत्तं यच्च योगवशेन वा ।
पित्रा भ्रात्राथवा पत्या न तत् स्त्रीधनमिष्यते ॥

That which has been given conditionally, or what has been given with a fraudulent intent—either by the father or brother or husband,—cannot be regarded as *Strīdhana*.—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 653 ; *Parāsharamādhava*, p. 370 ; *Vīramitrodaya*, p. 688 ; *Vyavahāramayūkha*, p. 154.]

NOTES

'*Conditionally*,'—under some such condition as 'this ornament is to be worn only on occasions of special rejoicings';—'*with fraudulent intent*,'—*i.e.*, simply with a view to deceive the coparceners and others.—(*Smṛtichandrikā*, p. 653.)

When ornaments and such things are given for wearing only on special occasions, it is said to have been '*conditionally given*.'—'*Yogavashēna*,' with fraudulent intent.—(*Parāsharamādhava*, p. 370.)

The woman does not acquire a proprietary right over what is given to her only for the purpose of defrauding the coparceners, or such ornaments and things as are given to her only for wearing.—(*Vyavahāramayūkha*, p. 154.)

26. नारद] भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्
सा यथाकाममश्नीयात् दद्याद्वा स्थावरादृते ॥

What has been given to the woman by her husband through love,—she may, on his death, enjoy it as she likes, or give it away, except the immovable property.—(*Nārada*.) [Quoted in *Aparārka*, p. 752 ; *Mitākṣarā*, pp. 606, 610 ; *Vivādaratnākara*, p. 510 ; *Vivādachintāmaṇi*, p. 218 ; *Vivādachandra*, 22. 1—4 ; *Smṛtichandrikā*, p. 656 ; *Parāsharamadhava*, pp. 331, 370 ; *Dāyabhāga*, p. 77 ; *Vīramitrodaya*, pp. 523, 691 ; *Smṛtitattva II*, p. 184 ; *Vyavahāramayūkha*, p. 155.]

NOTES

This refers to immovable property given by the husband as a loving gift.—(*Aparārka*, p. 752.)

This must be explained as implying that the husband can make a gift of his self-acquired property also only with the consent of his son and others.—(*Mitākṣarā*, p. 610.)

It is only in regard to the movable property given by the husband that the woman is free to give it away or sell it,—not in regard to immovable property; similarly in regard to the '*Saudāyika*' property also.—(*Vivādachintāmaṇi*, p. 218.)

The woman is free to do what she likes in regard to what she gets from her husband, in token of love,—but not in regard to immovable property.—(*Vivādachandra*, 22. 1—4.)

The meaning is that even on the death of her husband, the wife is not free to do what she likes with the immovable property given to her by her husband.—The word '*yathākāmam*' denotes freedom to do what one likes. Thus the conclusion is that in regard to her '*Saudāyika*' property, as also to the loving gifts apart from immovable property, the woman is free to do what she likes; while in all other cases, even in the matter of her *Strīdhana* property, she is not so free.—(*Smṛtichandrikā*, p. 56.)

The addition of the qualification 'given by her husband' implies that in regard to immovable property other than that given by the husband, she is free to give it away.—(*Dāyabhāga*, p. 77; *Smṛtitattva II*, p. 184.)

The meaning is that in regard to the immovable property given by her husband, all that the woman is entitled to is to reside (in the house) and enjoy it in other ways, not to sell or give it away or otherwise dispose of it.—(*Vīramitrodaya*, p. 691.)

In regard to immovable property received from her husband, the woman is not free to do what she ilkes.—(*Vyavahāramayūkha*, p. 155.)

27. कात्यायन] भर्त्रा प्रतिश्रुतं देयमृणवत् स्त्रीधनं सुतैः ।
देवल] तिष्ठेद् भर्तृकुले या [*v.l.*, सा] तु न या [*r.e.*, सा]
पितृकुले वसेत् ॥

The *Strīdhana* that had been promised by the father should be given by the sons in the same way as his debts are paid by them, if the widow stays in the house of her husband and does not go to live in that of her father.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 756; *Vivādachintāmaṇi*, p. 221; *Vivādaratnākara*, p. 514; *Vivādachandra*, 22. 2—4; *Smṛtichandrikā*, p. 656; *Vyavahāramayūkha*, p. 153; *Vibhāgasāra*, 11. 1—6; *Dāyanirṇaya*, 21. 1—8.]

NOTES

The term '*sons*' includes the grandsons also. This implies that over the *Strīdhana* property of the mother the sons have no right, so that the *Strīdhana* cannot be divided during the lifetime of the father.—(*Smṛtichandrikā*, p. 659.)

'*Promised*,'—to the wife.—(*Vyavahāramayūkha*, p. 156.)

If the father has promised that 'such and such a thing shall be given' to her, then that must be given to her.—(*Vibhāgasāra*, 11. 1—9.)

If the father has promised some *Stridhana* to his wife, but dies without fulfilling the promise,—the sons should make good that promise.—*Dāyanirṇaya*, 21. 1.–3.)

28. याज्ञवल्क्य 2. 148.] दुर्भिक्षे धर्मकार्ये च व्याधौ सम्प्रतिरोधके ।
गृहीतं स्त्रीधनं भर्ता न स्त्रियै दातुमर्हति ॥

During famines, for the performance of religious acts, during illness and during a distraint,—if the husband has taken his wife's money, he need not repay it to her.—(*Yājñavalkya*, 2. 148.) [Quoted in *Vivādaratnākara*, p. 513; *Vivādachandra*, 22. 2—4; *Smṛtichandrikā*, p. 658; *Madanapārijāta*, p. 669; *Parāsharamādhava*, pp. 374-375; *Dāyabhāga*, p 77; *Vīramitrodaya*, p. 693; *Smṛtitattva II*, p. 185; *Vyavahāramayūkha*, p. 156; *Vibhāgasāra*, 11. 1 1; *Dāyanirṇaya*, 5. 2. 2.]

NOTES

The implication is that, if persons other than the husband—such as the brother and the like—were to take the property, even at times of distress,—such as famine and the like—he would have to make it good.—'When a debtor is held up and told not to move without paying off the debt it is called '*Samprati-rodhaka*,' 'Distraint'; according to others, it means the time when the city is under a siege.—The rest is clear.—(*Vishvarūpa*.)

'*Durbhikṣa*'—is scarcity of food—'*Dharmakārya*,'—such religious acts as are obligatory, not those that are voluntary;—'*Vyādhi*'—is painful and prolonged illness; if the property is used for treatment of such disease;—'*Samprati-rodha*' is being kept in chains and the like.—On these occasions, if he has no means of his own, the husband may take his wife's money and free himself from these calamities. And if he is not possessed of the means necessary for repaying it, he need not repay it to her.—This refers to cases where the man is faced with the difficulty of not being able to raise a loan.—(*Aparārka*.)

'*Durbhikṣe*,' during a famine, for the purpose of supporting the family;—for the purpose of the performance of such religious acts as must be performed;—during illness—when he has been taken prisoner;—if on these occasions the husband, who has no other means, takes his wife's money, he need not repay it. He must repay it if he takes it in any way other than these. No other relation of hers except the husband shall take the woman's property during her lifetime; because for such appropriation, penalties have been prescribed in such texts as—'*Jīvantīnāntu tāsām ye, etc.*,' and '*Patyau jīvati, etc.*'—(*Mitākṣarā*.)

'*Sampratirodhakē*,'—when he has been made a prisoner. The particle '*cha*' implies the condition that *the husband has no means of his own*, which goes with everyone of the circumstances mentioned.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya*.)

'*Religious act*,'—such as must be done.—'*Illness*'—such as to interfere with the man's carrying on his business; for the cure of such ills, if the husband has taken his wife's money, he need not repay it.—(*Vivādaratnākara*, pp. 513-514.)

'*Religious act*,' such as must be done.—'*Sampratirodhakē*' (qualifying '*vyādhau*)—an illness which, if not cured, the man's business would suffer.—(*Vivādachandra*, 22. 2—4.)

'*Religious act*'—the obligatory, the occasional and the voluntary, also, in some cases, that which is performed for the allaying of evil, such as the *Grahayāga*.—'*Sampratirodhakē*,'—the distraint under which one has been put by his creditor and from which he cannot free himself without paying the money. '*Takes his wife's money*'—on account of there being no way out of the difficulty.—'*The husband*' who is poor and unable to repay the money; the implication is that if possible, the money must be repaid.—(*Smṛtichandrikā*, p. 658.)

'*Religious act*,'—such as must be done;—'*Sampratirodhakē*,'—in cases of capture, imprisonment and the like.—Under these circumstances, if the husband has no other means, he can spend his wife's money; and he need not repay it, *i.e.*, there is no such rule as that he must repay it. If he takes it under any other circumstances, he must repay it.—(*Madanapārijata*, p. 670.)

'*Sampratirodhakē*,' in cases of capture, etc.; if the husband has no means of his own, the husband may take his wife's money, which he need not repay. If he takes it in other circumstances he must repay it.—(*Parāsharamādhava*, p. 375.)

If during famines and such other circumstances, the husband is unable to live without drawing upon his wife's property, he may take it—but in no other cases.—(*Dāyabhāga*, p. 77.)

'*Religious acts*'—such as must be done, *i.e.*, the obligatory and occasional acts.—'*Sampratirodhakē*,'—punished by the king with imprisonment.—Vāchaspati, however, has taken '*Sampratirodhakē*' as an adjective qualifying '*Vyādhau*,' and explained it to mean such illness as interferes with business.—(*Vīramitrodaya*, p. 694.)

'*Sampratirodhakē*,'—when put by the creditor or others under such distraint as interferes with his food.—(*Smṛtitattva II*, p. 185.)

The mention of the 'husband' implies that the woman's property shall not be taken by *others* even in times of distress—such as famine and the like.—'*Religious act*,'—such as must be performed.—'*Sampratirodhakē*,'—in cases of imprisonment.—(*Vyavahāramayūkha*, p. 156.)

'*Pratirodhakē*'—is an adjective qualifying '*vyādhau*,'—'distressing illness.' The exception to this occurs in Kātyāyana's text—'*Atha chēt sa dvibhāryaḥ syāt. etc.*' (see 32, below).—(*Vibhāgasāra*, 11. 1-2.)

'*During a distraint*,'—when a creditor has put the husband under distraint, by not allowing him to take his food and so forth.—(*Dāyanirṇaya*, 5. 2. 2.)

29. देवल] व्याधितं व्यसनस्थं च धनिकैश्चोपपीडितम् ।
ज्ञात्वा निसृष्टं सम्प्रीत्या दद्याद्दास्मेच्छया हि सः ॥

On knowing the husband to be ill, or in trouble, or harassed by creditors,—if money has been given by the wife through love,—he should repay it of his own accord.—(*Devala.*) [Quoted in *Vivādachintāmaṇi*, p. 220.]

NOTES

Having come to know that her husband or other relative is suffering from illness and the rest, if the wife has spent her money over him, the husband and others should repay it of their own accord.—(*Vivādachintāmaṇi*, p. 220.)

30. बृहस्पति] (A) स्थावरादि धनं [*v.l.*, स्थावराज्जीवनं] स्त्रीभ्यो यद्दत्तं श्वशुरेण तु ।
न तच्छक्यमपाहर्तुं दायादैरिह कर्हिचित्
[*v.l.*, इतरैः श्वशुरे मृते]
कात्यायन] (B) भोक्तुमर्हति कृत्स्नांशं गुरुशुश्रूषणे रता ।
न कुर्याद्यदि शुश्रूषां चैलपिण्डे नियोजयेत् ॥

(A) Any immovable and other property that has been given to women by their father-in-law can never be taken away *by the coparceners* [*v.l.*, by others on the death of the father-in-law]. (*Bṛhaspati*)—(B) Devoted to the service of her elders, she is entitled to enjoy her allotted share. In case she ceases to attend upon her elders, she shall receive only food and clothing.—(*Kātyāyana.*) [Quoted in *Vīramitrodaya*, p. 655; *Smṛtichandrikā*, p. 679.]

NOTES

(A) If the widow is well-behaved, any property that her father-in-law may have allotted to her for her maintenance shall never be taken by the coparceners.—(B) If the widow is not as described, even what has been given should be taken away from her.—(*Vīramitrodaya*, p. 655.)

(A) '*Father-in-law*'—stands for her supporter in general.—*The 'immovable property'* stands for all kinds of property; hence even the wealth that may have been given to women for their maintenance should not be taken away by others. (B) States the exception to what has been said in (A).—(*Smṛtichandrikā*, p. 679.)

31. कात्यायन] (A) न भर्ता नैव च सुतो न पिता भ्रातरो न च ।
आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः ॥
(B) यदि ह्येकतरस्त्वेषां स्त्रीधनं भक्षयेद्बलात् ।
सवृद्धि प्रतिदाप्यः स्यात् दण्डं चैव समाप्नुयात् ॥
(C) तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्वकम् ।
मूलमेव तदा दाप्यो यद्यसौ धनवान् भवेत् ॥
(D) अथ चेत् स द्विभार्यः स्यात् न च तां भजते पुनः ।
प्रीत्या विसृष्टमपि चेत् प्रतिदाप्यः स तद्बलात् ॥
(E) ग्रासाच्छादनवासानामुच्छेदो यत्र योषितः ।
तत्र स्वमाददीत स्त्री विभागं रिक्थिनां तथा ॥

(A) Neither husband, nor son, nor father, nor brothers have the right to take away or spend the *Strīdhana*. (B) If anyone of them forcibly spends the *Strīdhana* he should be made to repay it with interest, and should also suffer punishment. (C) If, however, he spends it with her consent and in a conciliatory manner, he should be made to repay only the principal, if he has the requisite means. (D) If a man has two wives, and he does not love one of them, then he should be made to repay to her what may have been given to him by her, even through love. (E) In a case where a woman is deprived of food, clothing, and residence she may take her share of the property from the coparceners.—(*Kātyāyana.*) [Quoted in *Aparārka*, pp. 752-755; *Vivādaratnākara*, pp. 513, 514; *Vivādachintāmaṇi*, p. 220; *Vivādachandra*, 22. 2. 2. 3, 6; *Smṛtichandrikā*, pp. 656, 658; *Parāshara-mādhava*, p. 375; *Dāyabhāga*, p. 78; *Vīramitrodaya*, p. 692; *Smṛtitattva II*, p. 155; *Vyavahāramayūkha*, pp. 155-157; *Vibhāgasāra*, 1. 1-2.]

NOTES

'*Does not love*,'—*i.e.*, does not approach her, even during her courses; or does not supply her with food and clothing;—in that case, even though she may have given her money to him for his relief from diseases and other troubles, she should compel him to repay her.—(*Vivādachintāmaṇi*, p. 221.)

(E) If a woman does not receive food and clothing, then she must be repaid what she may have given in token of love.—(*Vivādachandra*, 22 2-3 to 6.)

(C) '*If he has the requisite means*.'—This implies that if he has no means he should not be made to pay even the principal. This shows that the husband and others are not free to do what they like with the *Strīdhana*. Thus even

though the wife acquires, by marriage, a dependent ownership over her husband's property, under the husband's control—yet the husband does not acquire even that sort of ownership over his wife's property.—(*Smṛtichandrikā*, p. 656.)

(A) If a man, having taken his wife's money, marries another wife and disregards the former wife, then the king should compel him to repay the money he had received.—(E) If the husband does not provide food and clothing for the wife then this also the wife shall extract from him by force.—(*Dāyabhāga*, p. 78.)

(A) Having taken his wife's money, if a man marries another wife and disregards the former wife, the king should compel him to repay the money he had received.—(E) If the husband does not provide food, clothing, and residence for the wife she shall take all those by force, or money enough to supply her with all these.—But all this only if she is free from all defects and faults.—(*Vīramitrodaya*, p. 692.)

(D) '*Dvibhāryaḥ*.'—This epithet supplies the reason for his not loving the former wife. Should he discontinue meeting her even at her 'periods' he should be compelled to surrender to her what she may have given to him, even through her love for him.—(E) If the husband does not supply food and clothing for the wife, the wife shall take away from him even what she may have given to him for meeting the expenses of his treatment during illness. (*Vibhāgasāra* 1. 1-2.)

32. कात्यायन] जीवन्त्याः पतिपुत्रास्तु देवराः पितृबान्धवाः ।
अनीशाः स्त्रीधनस्योक्ता दंड्यास्त्वपहरन्ति ये ॥

So long as a woman is alive, her husband, sons, brothers-in-law or paternal relations have no right over her *Strīdhana*; if they misappropriate it, they should be punished.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 752.]

33. मनु 8. 29.] जीवन्तीनां तु तासां ये तद्धरेयुः स्वबान्धवाः ।
तांश्छिन्द्याच्चौरदण्डेन धार्मिकः पृथिवीपतिः ॥

While the women are alive, if their relations appropriate their property,—on them the righteous king shall inflict the punishment of thieves.—(*Manu*, 8. 29.) [Quoted in *Aparārka*, p. 752; *Mitākṣarā*, p. 869; *Vivādaratnākara*, p. 512; *Madanapārijāta*, p. 670; *Smṛtichandrikā*, p. 659; *Vyavahāramayūkha*, p. 156.]

NOTES

This 'punishment of thieves' has been laid down for those relatives who should appropriate the property of women. They appropriate her property in various ways; giving out, for instance, that 'she is not a mistress of herself as

regards what she gives away and what she enjoys, I am the real owner of the property.'—'*Relations,*' Brothers-in-law and others.—This 'punishment of thieves' has been laid down as—'with whatever limb a thief operates against men, each of those limbs the king shall cut off.'—(*Manu*, 8. 334.)—What the text means is that the property of helpless women should be specially guarded against her own relations.—(*Mṛdhatithi.*)

Under the pretext of being heirs to her property, and hence of guarding it, if her relations, during her lifetime, appropriate her property, then the righteous king should punish them like thieves.—(*Kullūka.*)

'*Relations,*'—the brother-in-law and others.—(*Rāghavānanda.*)

Her 'relations'—brothers, brothers-in-law, and so forth.—By the term '*is alive*' it is implied that after her death, the property goes to her relations.—(*Nandana.*)

'*If the women are alive.*'—This implies that after their death, their relations have a right to their property, in accordance with the form in which they had been married.—(*Aparārka*, p. 753.)

The woman's property should not be appropriated by her relations, because punishment has been prescribed in the present text for such appropriation—(*Mitākṣarā*, p. 869.)

34. मनु 8. 25.] वशापुत्रासु चैवं स्यात् रक्षणं निष्कुलासु च ।
पतिव्रतासु च स्त्रीषु विधवास्वातुरासु च ॥

There shall be similar protection in the case of barren women, of sonless women, of women devoted to their husbands, and of widows faithful to their husbands—when their family is extinct; and also when they are in distress.—(*Manu*, 8. 25.) [Quoted in *Vivādaratnākara*, p. 512.]

NOTES

Whoever may be without a protector, that person's property shall be taken care of by the king; the 'barren women' and the rest are mentioned only by way of illustration.—'*Vashā*' is barren woman.—'*Sonless,*' one who has no son, or whose son is incapable, or whose son is in a bad condition. Between '*vashā*' and '*aputrā*' we have the copulative compound.—Though the 'barren' woman is included under the category of 'sonless women,' yet both have been mentioned for the purpose of showing that, even though her husband be alive, the barren woman should be looked after; as on account of her being 'superseded' (by another wife taken by her husband) he may neglect her.—'*Whose family is extinct*'—this is added with a view to indicate those who have no protector in the shape of the husband's younger brother or paternal or maternal uncle, and, being women, are themselves incapable of looking after their own property—and whose other relations are jealous of her property.—When the woman herself is somehow capable of

taking care of herself, then there is nothing to be done by the relations. It is in view of this that the text has added the phrase '*of women in distress*'; this epithet indicating *inability*.—Others have explained the term 'women in distress' as women whose *husbands* are in distress and incapable of taking care of the wife. This also applies to the case of those women in whose family there are no men left to take care of them; the phrase '*whose family is extinct*' means 'those who have no family—*i.e.*, relations.'—Others have explained the term '*niṣkulā*' to mean the *misbehaved women*; of such women also, the property acquired by selling their beauty has to be protected by the king. According to this explanation the term '*niṣkulā*' has to be taken by itself, and not as qualifying the other terms. Till such time as the widow remains faithful to her husband, she deserves to have her property looked after by the king. In the event of her being unfaithful, she does not deserve to have any property at all; she is to be banished; this 'banishment' consisting of her being driven out of the main apartments of the home, and not being entirely driven away. According to Manu, however, the treatment to be accorded to such women is 'supersession,' and not the confiscation of property; the sense of the present text will, therefore, be that 'such a woman shall not receive that property which she should have received on account of supersession.'—Our opinion, however, is that in the case of the woman who is unfaithful to her husband and addicted to misbehaviour, confiscation of her property is only right and proper; this has also been declared in Manu, under 9. 78.—(*Medhātithi.*)

'*Vashā*,'—barren woman;—'*aputrā*,'—one who has had no son born to her, or who had a son but lost him. The property of these should be protected. and she herself supported, by the king; the same for such women as have taken to a life of celibacy and the like in honour of their husbands.—(*Sarvajña-nārāyaṇa.*)

In regard to a barren wife, the husband, having married another wife, becomes indifferent, after having made provision for her maintenance. In regard also to such women as have no sons, or as have their husbands gone abroad, or as have no *sapiṇḍa* relations, or as are chaste widows, or stricken with illness—their property has to be protected by the king, just like the property of minors.—(*Kullūka.*)

'*Vashā*,'—a barren woman whose husband has gone abroad;—'*aputrā*,'—whose son is incapable;—'*niṣkulā*,'—who has no such relations as her husband's uncles and so on.—'*Pativratāsu*,'—those who are devoted to their husbands, but whose husbands are incapable of protecting them;—'*vidhavāsu*'—those who have lost their sons and husbands; . . . . '*Āturāsu*,'—those suffering from leprosy and such diseases.—The implication is that the property of unchaste women need not be protected.—(*Rāghavānanda.*)

'*Vashā*,'—barren;—'*aputrā*,'—whose son is dead;—'*niṣkulā*,'—who has no relations;—'*pativratā*,'—whose husband is gone abroad;—'*āturā*'—whose son, husband and other relations are in distress.—'*Protection*'—of their property.—(*Nandana.*)

'*Niṣkulāsu*,'—who have no one in the husband's or the father's family.—(*Rāmachandra.*)

'*Vashā*,'—barren;—'*aputrā*,'—who has lost her son;—'*niṣkulā*,'—who has lost all her paternal and maternal relations.—(*Vivādaratnākara*, p. 512.)

35. कात्यायन] लिखितस्येति धर्मोऽयं प्राप्ते पितृकुले वसेत् ।
व्याधिता प्रेतकाले तु गच्छेद्बन्धुजनं ततः ॥

Having obtained her property, she should live in her husband's house; when afflicted with disease, she should, at the time of death, go to her relatives; such is the opinion of Likhita—(*Kātyāyana.*) [Quoted in *Vivādaratnākara*, p. 514; *Vivādachintāmaṇi*, pp. 220-221.]

NOTES

Having obtained her property there, she shall live in her husband's house; when afflicted with serious illness, she shall go to the house of her husband's relations—(*Vivādaratnākara*, p. 514.)

Having obtained her property, she should live in her husband's house and should not go to her father's house.—(*Vivādachintāmaṇi*, p. 221.)

36. (?) स्त्रीणां स्वपतिदायस्तु उपभोगफलः स्मृतः ।

For women, their husband's property is meant only to be enjoyed.—(?) [Quoted in *Vivādachandra*, 22 1—5]

NOTES

Women can only enjoy the property of their husbands;—they cannot spend it in wrong ways.—(*Vivādachandra*, 22. 1—5)

37. कात्यायन] अपचार [*v.l.*, कार] क्रियायुक्ता निर्लज्जा चार्थनाशिका ।
व्यभिचाररता या च स्त्रीधनं न च साऽर्हति ॥

One addicted to evil ways, one who is immodest, one prone to waste wealth, one who is unchaste,—such women do not deserve any property.—(*Kātyāyana.*)

NOTES

See III, 54.

38. मनु 8. 146.] भार्या पुत्रश्च दासश्च निर्धनाः सर्व एव ते ।
यत्ते समधिगच्छन्ति यस्यैते तस्य तद्धनम् ॥

The wife, the son, and the slave have been declared to be without property; whatever they acquire belongs to him to whom they belong.—(*Manu*, 8. 416.)

NOTES

See above.

39. कात्यायन] यज्ञार्थं द्रव्यमुत्पन्नं तस्माद्द्रव्यं नियोजयेत् ।
स्थानेषु धर्मयुक्तेषु न स्त्रीमूर्खविधर्मिषु ॥

Wealth was produced for the purposes of sacrifices ; therefore wealth should be used on occasions connected with religion, and not on women, or illiterate persons, or heretics.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 756 ; *Vivādaratnākara*, p. 514.]

NOTES

See I, 123.

Section 2

IV (b)

PARTITION OF STRIDHANA

40. मनु 9. 192.] जनन्यां संस्थितायां तु समं सर्वे सहोदराः ।
भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः ॥

When the mother has died, all the uterine brothers and uterine sisters shall divide the maternal property equally among themselves.—(*Manu*, 9. 192.) [Quoted in *Aparārka*, p. 721 ; *Mitākṣarā*, p. 851 ; *Vivādachintāmaṇi*, p. 221 ; *Vivādachandra*, 22. 2–8 ; *Smṛtichandrikā*, p. 661 ; *Madanapārijāta*, p. 667 ; *Parāsharamādhava*, p. 371 ; *Dāyabhāga*, p. 79; *Vīramitrodaya*, p. 694 ; *Vyavahāramayūkha*, pp. 157, 160.]

NOTES

See also notes under II, 260.

'*Equally*'—without any 'preferential share' for the eldest.—'*Maternal property*'—mother's property, other than her *Strīdhana*.—'*Sisters*'—such as have no sons ;—'*Sanābhayaḥ*,' uterine.—Some people hold that brothers have a share in the mother's *Strīdhana* also, according to Bṛhaspati's text—'*Strīdhanam syādapatyānāṁ, etc.*' (43 below)—To the same effect as the present text we have such texts as '*Strīdhanam duhitṛgāmi, etc.*' (42 below.)—(*Sarvajñanārāyaṇa.*)

On the mother's death uterine brothers and uterine unmarried sisters should divide the mother's property equally among themselves ; and, just as in the case of the father's property, the brothers give to the *unmarried* sisters a fourth part of their own shares, so in the case of the mother's property also the brothers should give to the *married* sisters a fourth part of their own shares.—(*Kullūka.*)

'*Samsthitāyām*,' being dead.—'*Sanābhayaḥ*,' born of the same womb. In the case of the father's property the brothers give to the unmarried sisters only a quarter of their own shares, while in the mother's property, the share of the unmarried sisters is equal to that of the brothers ; this is the difference.—(*Rāghavānanda.*)

This lays down the rule regarding the maternal property.—'*Sanābhayaḥ*,' uterine.—'*Bhājeran*,' should divide.—(*Nandana.*)

'*Bhaginyashcha sanābhayaḥ*'—sisters born directly of the same mother as the brothers.—(*Rāmachandra.*)

'*Cha*' implies option (*i.e.*, the brothers *or* sisters shall take the property) ; and in this option, the unmarried daughters come first ; according to Manu himself—'*Mātustu yautukam yat, etc.*' (48 below)—(*Aparārka*, p. 721.)

The construction is—'all the uterine brothers shall divide the maternal property equally, and the uterine sisters shall divide the maternal property equally'; not that 'the uterine brothers and uterine sisters shall *jointly* divide the property.'—The term '*samam*,' 'equally,' serves the purpose of precluding partition with a 'preferential share'; and the term '*uterine*' excludes those born of different mothers.—(*Mitākṣarā.*)

'*Samam*,' *i.e.*, not in unequal shares.—'*Sanābhayaḥ*,' uterine. It is only the *unmarried* sisters that are equal sharers. –(*Vivādachintāmaṇi*, p. 221.)

In the absence of the father, on the mother's death, the sons shall divide her property without giving a preferential share to the eldest.—'*Sanābhayaḥ*,' uterine.—(*Vivādachandra*, 22. 2—8.)

This refers to the *Anvādhēya* (*Strīdhana*) property of the mother.—(*Smṛtichandrikā*, p. 661.)

The meaning is that the property shall be inherited in the following order of succession :—(1) the direct daughters of the deceased herself; (2) the sons of these daughters; (3) the uterine brothers, the direct sons of the deceased, *not* the sons of her co-wives; (4) the sons of these sons.—The mention of 'uterine' precludes those born of different mothers.—If the deceased has no sons or daughters or grandsons of her own, her step-son and others succeed to her property. In a case where the step-daughter belongs to a higher caste, the property shall go to the former, and, in her absence, to her son.—(*Madanapārijāta*, p. 667.)

This does not mean that the sons and daughters shall divide the mother's property conjointly; all that it means is that they share it in equal shares.—(*Parāsharamādhava*, p. 371.)

The meaning is that the brothers and sisters shall divide the property.—(*Dāyābhāga*, p. 79.)

The uterine brothers and uterine sisters are jointly entitled to inherit their mother's property.—(*Vīramitrodaya*, p. 694.)

The meaning of what the *Mitākṣarā* has said is that (*a*) in cases where there are no daughters (or daughter's sons) of the deceased, the sons succeed to the property and share it equally; and (*b*) in cases where there are daughters of the deceased, they succeed together and share the property equally; the text does not lay down the *simultaneous succession* of sons and daughters to the mother's property.—(*Vyavahāramayūkha*, pp. 157-158.)—This text refers to such property as has been declared to be '*Strīdhana*' in the technical sense.—(*Ibid.*, p. 160.)

It is the *unmarried* daughter who is to have the same share as the sons.—(*Vivādaratnākara*, p. 516.)

41. याज्ञवल्क्य 2. 117.] विभजेरन् सुताः पित्रोरूर्ध्वं रिक्थमृणं समम् ।

On the death of the parents, the sons should divide the property and the debt equally.—(*Yājñavalkya*, 2. 117.)

NOTES

See II, 254.

42. गौतम 28. 22.] स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च।

The *Strīdhana* belongs to the daughters who are unmarried and unsettled.—(*Gautama*, 28. 22.) [Quoted in *Aparārka*, p. 721; *Mitākṣarā*, pp. 768, 849; *Vivādaratnākara*, p. 516; *Vivādachintāmaṇi*, p. 222; *Vivādachandra*, 22. 2—9; *Madanapārijāta*, p. 665; *Smṛtichandrikā*, p. 662; *Parāsharamādhava*, pp. 337, 371; *Vīramitrodaya*, p. 697; *Vyavahāramayūkha*, pp. 141, 159, 160; *Medhātithi*, (on *Manu*, 9. 131); *Dāyanirṇaya*, 11. 1—8.]

NOTES

Here Gautama lays down the title of unmarried and unsettled daughters to inherit the mother's property.—'*Apratiṣṭhitā*,' 'unsettled,' is one who has no children, or who is poor, or who is unfortunate.—(*Aparārka*, p. 721.)

On the death of the mother, the mother's property is taken first of all by the daughters; and among them, if there is one unmarried and another married, it is the unmarried one that takes it; and the married one takes it only when there is no unmarried daughter; among the married daughters also,—if one is 'settled' and another 'unsettled,' the unsettled one gets the property.—The particle '*cha*' includes the 'settled ones' also—'*Unsettled*' means *childless* or *poor*.—This rule does not refer to the '*Shulka*' property of the mother, which goes to her uterine brothers.—(*Mitākṣarā*, p 849.)

'*Unsettled*,' *childless; one whose husband is poor and who is unfortunate*,—say the *Ratnākara* and others.—These daughters inherit the mother's property, like the sons.—(*Vivādachintāmaṇi*, p. 222.)

If there are unmarried and unsettled daughters, those also shall receive the same share as their brothers.—'*Unsettled*,' one who has none to protect her, is childless, whose husband has no property and who is unfortunate.—(*Vivādachandra*, 22. 2—9.)

'*Aprattā*,' unmarried; '*apratiṣṭhitā*,' poor.—(*Madanapārijāta*, p. 665.)

The mother's *Strīdhana*, 'Adhyagni' and the rest, goes to the unmarried daughters, and among the married ones, to those that are 'unsettled,' and not to all,—'*Unsettled*,' childless, poor, unfortunate or widowed.—(*Smṛtichandrikā*, pp. 662-663.)

The meaning is that among the daughters, if some are married and others unmarried, the mother's property goes to the unmarried ones; among married ones also, if some are rich and others poor, it goes to the poor ones.—(*Parāsharamādhava*, p. 337.)

'*Apratiṣṭhitā*,' '*unsettled*'—means *childless, poor, unfortunate* or *widowed*; such is the explanation of Aparārka and the *Kalpataru*; the first two only, according to Vijñāneshvara and others. Though the text has used the common term '*Strīdhana*,' it stands for *Strīdhana* different from the three kinds of *Strīdhana* described before.—(*Vīramitrodaya*, p. 697.)

Among the married daughters, if one is rich and another poor, it is the latter that receive the property.—'*Unsettled,*' poor. In the term '*strīdhana*' in this text, '*Strī*' (woman) includes the father also,—so say the traditionists.—(*Vyavahāramayūkha*, p. 141.)—This refers to the technical '*Strīdhana*' other than that which has been called '*anvādhēya*,' and that which had been given by the husband in token of love.—(*Ibid.*, p. 159.)—In all such texts the term '*strīdhana*' stands for that property to which the technical name '*Strīdhana*' has been given.—(*Ibid.*, p. 160.)

The term 'unsettled' stands for those who, though married, are childless and without any property of their own, not having obtained a footing in the house of their husbands.—(*Medhātithi* on *Manu*, 9. 131.)

'*Unmarried*'—not betrothed.—A woman's *Strīdhana* is inherited first of all by her unmarried daughter; in her absence, by the betrothed daughter; after her, the *married daughter with son*, and *the married daughter expecting a son* are equally entitled; after that the widowed and the barren daughters are equally entitled.—(*Dāyanirṇaya*, 11. 1—7.) In the absence of all these daughters, the property goes to the sons; as is clear from Section 62 below, where the common term 'child' is used.—(*Dāyanirṇaya*, 11. 1-2.) In the absence of the son, the property goes to the daughter's son; then to the son's son; then to the son's grandson; after that to the son of the dead woman's co-wife, then the co-wife's grandson and then the co-wife's great-grandson.—In the absence of these it goes to the husband (see Section 63, below);—after that to the brother, as is clear from the words of *Kātyāyana* (Section 65 below);—after that it goes to the mother; then to the father. In the case of the dead woman having been married by the *Āsura* or other lower forms of marriage, her property goes to the heirs enumerated above, down to the co-wife's great-grandson;—after them, it goes to her mother, then to her father, then to her brother, and last of all to her husband,—according to *Manu*, 9. 197 (see Section 63 below), and *Kātyāyana* (Section 55.)—(*Dāyanirṇaya*, 11. 2.)

43. बृहस्पति 25. 87.] स्त्रीधनं तदपत्यानां [*v l.*, स्यादपत्यानां] दुहिता च तदंशिनी ।
अप्रत्ता चेत्—समूढा तु लभते मानमात्रकम्
[*v.l.*, न लभेन्मातृकं धनम्] ॥

The *Strīdhana* goes to the children (sons); the daughter is entitled to share it, if she is not married. If she is married, she shall receive only an honorific trifle.—(*Bṛhaspati*, 25. 87.) [Quoted in *Aparārka*, p. 721; *Vivādaratnākara*, p. 516; *Vivādachintāmaṇi*, pp. 221-222; *Vivādachandra*, 19. 2. 1, 22. 2-10; *Smṛtichandrikā*, p 661; *Parāsharamādhava*, p. 372; *Dāyabhāga*, p. 79; *Vīramitrodaya*, p. 695; *Vyavahāramayūkha*, p. 158; *Vibhāgasāra*, 11. 2-1].

NOTES

'*Mānamātrakam*'—some little thing.—(*Aparārka*, p. 721.)

'*Apatyānām*,' '*children*,' stands here for *sons*.—'*To share it*,'—*i.e.*, to receive the same share as the son. '*Aprattā*' unmarried. From this it follows

that in Manu's text also, it is the *unmarried* daughters that are taken to be declared as having the same share as the sons.—As regards the married daughters, some little thing may be given to them, in accordance with their position.—(*Vivādaratnākara*, p. 516.)

'*Apatyānām*,' to the *sons*.—'*Share it*' must be taken to mean '*share it equally*,' as no other proportion is mentioned.—'*Samūḍhā*,' married.—'*Mānamātrakam*,' some trifle, in accordance with the property available.—(*Vivādachintāmaṇi*, p. 222.)

To the married and settled daughters also, something may be given in accordance with the property, and the remainder they shall divide in the prescribed manner.—(*Vivādachandra*, 22. 2—10.)

'*Apatyānām*,' children in the shape of sons. In both the lines the particle '*cha*' has the copulative force. Hence both (son and daughter) together are the persons that do the dividing of the property.—(*Smṛtichandrikā*, p. 661.)

'*Apatyānām*,' male children.—(*Parāsharamādhava*, p. 372.)

The term '*apatya*' stands for *sons*. They share the mother's property with her unmarried daughters.—(*Dāyabhāga*, p. 79.)

'*Apatyānām*' sons; the '*daughter*' being mentioned separately.—'*Entitled* to *share it*,'—equally with the sons.—'*Honorific trifle*'; as a mark of honour, she gets some little thing,—not a share equal to the son's.—(*Vīramitrodaya*, p, 695.)

'*Entitled to share it*,'—*i.e.*, to receive a share equal to the son's.—'*Aprattā*,' unmarried,—If there is a *married* daughter, she shall get only '*an honorific trifle*,'—some little thing as a mark of respect.—In case there are no *unmarried* daughters, the married ones receive the same share as the sons; this is what is expressly stated by Kātyāyana in the text—'The sisters with husbands shall divide it with their relations.'—(*Vyavahāramayūkha*, p. 158.)

'*Apatyānām*'—sons.—The unmarried daughters should receive equal shares; the married ones are to receive only some honorific trifle.—(*Vibhāgasāra*, 11. 2. 2.)

44. याज्ञवल्क्य 2. 117.] मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः ।

What remains of the mother's property after paying off her debts goes to her daughters; in the absence of the daughters, to the sons and other offspring.—(*Yājñavalkya*, 2. 117.) [Quoted in *Vivādaratnākara*, p. 517; *Vivādachintāmaṇi*, p. 222; *Vivādachandra*, 23. 1-2; *Madanapārijāta*, p. 665; *Parāsharamādhava*, pp. 336, 371; *Dāyabhāga*, p. 25; *Vyavahāramayūkha*, p. 159; *Vibhāgasāra*, 11. 2 - 6.]

NOTES

Just as sons are equal sharers in the father's property, so are the daughters in the mother's property; they shall divide among themselves only what remains after the debts have been paid off; but they shall not pay her debts if the mother has left no property.—"Have the sons nothing to do with the mother's property?"—No, it is not so; it is in the absence of the daughters

that the '*Anvaya*'—*i.e.* sons— come in for the property.—Others have explained this latter sentence to mean that 'in the absence of the daughters, the sons *of the daughters* themselves get the property.'—But this is not right; because we have the Vedic mantra-text—'*Na jāmaye tanvo rikthamāraik . . . yadī mātaro janayanta vahnika,*'—which means that 'if mothers give birth to both son and daughter, then it is the son alone that inherits the property, not the daughter also.'—It is in view of this that the impotent person who is unable to marry is debarred from inheritance.—"In that case, then, the property should go to the son even when the daughter is there."—Not so; because we have the express *Smṛti-text* declaring that 'the mother's property goes to the daughters'; hence it is only in the absence of the daughter that the property should go to the son.—(*Vishvarūpa.*)

As regards the mother's property, what remains of it after the clearing off of her debts shall be divided by the daughters among themselves; and in the absence of the daughters, it goes to the offspring of the daughters; and it will go to the sons only in the absence of the daughters and the daughter's offspring.—(*Aparārka.*)

To the general rule that 'the sons shall divide the parents' property among themselves,' the present text sets forth an exception. The daughters shall divide the mother's property among themselves,—but what remains after the repaying of the mother's debts. The implication is that if the mother's property is equal to, or less than, the debts left by the mother, then her property goes to her sons. That is to say, the debts of the mother are to be paid by her sons, not by her daughters; but if there is any property left after the paying off of the debts, that property goes to the daughters. And this is only right; because constituents of the mother's body abound in the body of the daughters, just as the constituents of the father's body abound in that of the sons; and it is on this ground that the mother's property goes to the daughter and the father's property goes to the son.—The question arising as to who should get the property left after the paying off of the debts, in case there are no daughters living,—the answer is that in the absence of the daughters, the property is to be taken by the daughter's '*Anvaya*'—*i.e.*, the son and other descendants.—Though this is already implied in the declaration that 'the sons divide the parents' property,' yet it has been reiterated here for the purpose of making it quite clear.—(*Mitākṣarā.*)—The son receives the mother's share also, if she has no daughter.—A son born of a mother belonging to a caste different from that of her husband receives only his own prescribed share out of the father's property; but of his mother's property, he receives the whole. This is what has been declared by Manu in the text—'*Ūrdhvam vibhāgajjātastu, etc.*' (9. 216).—In case the father and mother have been divided, their property does not belong to the son born *before* that division; nor does the brother's share belong to the one born *after* the division;—as declared in the text '*Anīshaḥ pūrvajaḥ pitrye, etc.*'—Similarly if the father has acquired some property after the previous division, all that goes to the son born after the division; as declared in the text—'*Putraiḥ saha vibhaktena, etc.*'—and in Manu's text (9. 216)—'*Samṛṣṭāstena etc.*'—(*Mitākṣarā.*)

Of the mother's property, what remains after the clearance of the mother's debts, shall be shared by the daughters with their brothers; but the

debt shall go to the sons. In the absence of the daughters, the '*Anvaya*'—son—of the daughter shall receive the share that should have gone to their mother.—(*Viramitrodaya-Ṭīkā* on *Yājñavalkya*.)

'*Ṛṇāt*'—from the debt of the mother,—'*Shēṣam*,' what remains.—Thus the meaning is that, after having cleared off the mother's debts, the unmarried and unsettled daughters shall take what remains of her dowry and her toilet-articles;—in the absence of the daughters, the '*Anvaya*,'—*i.e.*, the son and other offspring—of the daughters, shall take it.—This refers to cases where the deceased had been married by the '*Brāhma*' form of marriage.—(*Vivādaratnākara*, p. 517.)

The daughters shall receive what remains of the mother's property after clearing off her debts;—and in the absence of the daughters, the '*Anvaya*'—*i.e.*, the daughter's son and daughter's daughter—receives the said property — This refers to such clothes and other property as the mother may have received in connection with her marriage which must have been in the '*Brāhma*' form.—(*Vivādachintāmaṇi*, p. 222.)

'*Ṛṇāt*,' from the debt, of the mother;—'*Shēṣam*,' what remains,—the daughters shall receive;—and if there are no daughters living, the sons and other offspring of the daughters shali take it.—*Bālarūpa* takes '*Anvaya*' as 'the *anvaya* of the deceased mother.'—(*Vivādachandra*, 23. 1-2.)

The daughters shall divide and take what remains of the mother's property after the clearing off the debts incurred by the mother; but with this difference that, if among the daughters some are married and some unmarried, then the property shall go to the unmarried ones.—Here, first of all, the property is to go to the daughters and then to the descendants of the daughters.—(*Madanapārijāta*, p. 665.)

What remains of the mother's property after paying off her debts, shall be taken by the daughters. It follows that if the mother's property is equal to or less than the amount of debts left by her, then the property shall go to the sons, even though the daughters may be there.—(*Parāsharamādhava*, p. 336.)—On the death of the mother, her property is taken first of all by her daughter.—(*Ibid*, 370.)

Some people hold that the term '*Anvaya*' here stands for *the descendants of the daughters*; while according to others (it means the *sons* of the deceased mother and) the meaning is that in the absence of the daughters, the property goes to the sons (of the deceased). This latter is in keeping with custom.—The phrase '*ṛṇāt shēṣam*' has been taken by the Traditionists to imply that if the property is equal to or less than the debt, then the sons shall take it.—(*Vyavahāramayūkha*, p. 159.)

The meaning is that they will take what remains after the clearing off of the debts.—This refers to clothes and other things received in connection with marriage performed in the *Brāhma* and other (superior) forms of marriage.—(*Vibhāgasāra*, 11. 2- 7.)

45. नारद] मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयः ।

The daughters (shall take the property) of their mother; and in the absence of the daughters, their daughters and then

their offspring (son).—(*Nārada.*) [Quoted in *Mitākṣarā*, p. 850 ; *Madanapārijāta*, p. 667 ; *Parāsharamādhava*, p. 371 ; *Vyavahāramayūkha*, p. 159.]

NOTES

The meaning is that 'in the absence of daughter's daughters, daughter's sons receive the property.'—[That is, what the text means is that 'In the absence of the mother, her property goes directly to her daughters,—' in the absence of these daughters, it goes to the daughters' *Anvaya*, offspring,—and among them, it goes first to the daughters' *daughters*, and in the absence of these latter, to the *daughter's sons*' ;—in this case, the term '*Anvaya*' has to be taken first as in the nominative case and in the second case in the locative.—Or, we may take '*anvaya*' in the locative only ; in which case, the meaning would be that—'The mother's property goes to her daughters,—in the absence of the daughters, to the daughter's daughters,—and in the absence of these latter, to the daughter's sons, who are born '*anvayē*'—*among the offspring*—of the daughters. We get the same meaning if we read '*Anvaya*' with the nominative ending.—The best reading would be '*tadanvayāḥ*,' in the Nominative-Plural form.—*Bālambhaṭṭi.*]—(*Mitākṣarā*, p. 851.)

The daughters receive the mother's property ;—in the absence of the daughters, it goes to the daughter's daughters ;—in the absence of these latter, to the daughter's sons, who are born *among the offspring* (read '*anvayē*') of the daughter. '*Anvayaḥ*' with the nominative ending is another reading ; even with this reading it is the *daughters' sons* that come in after the *daughter's daughters*,—and not the *offspring of the daughter's daughter*,—these latter being further removed than the *daughter's sons*. In the absence of the *daughter's sons*, the property goes to their '*Anvaya*,' *i.e.*, the sons and grandsons (of the daughter's sons).—(*Madanapārijāta*, p. 667.)

The meaning is that in the absence of the daughter's daughters, the daughter's sons receive the property.—(*Parāsharamādhava*, p. 371.)

In the absence of the daughters, the daughter's offspring receive the property.—(*Vyavahāramayūkha*, p. 159.)

46. शङ्खलिखित] स्त्रीधनं कन्या लभते । तदपत्यस्य च द्रव्यं कन्याभाग एव ।

The appointed daughter inherits the *Strīdhana* ; and to her share falls also the property of her mother's son.—(*Shaṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 561.]

NOTES

The pronoun '*tat*' in the word '*tadapatyasya*' refers to the mother of the daughter (mentioned in the preceding sentence.) The meaning is that if a son subsequently born to the mother were to die sonless, his share would go to the aforesaid daughter, who being the 'appointed daughter' would be equal to the uterine brother of the deceased.—(*Vivādaratnākara*, p. 561.)

47. मनु 9. 193.] यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः [*v.l.*, यथांशतः] ।
मातामह्या धनात् किञ्चित् प्रदेयं प्रीतिपूर्वकम् ॥

Even to the daughters of the daughters, something shall be lovingly given, as is quite proper, out of the property of their maternal grandmother.—(*Manu*, 9. 193.) [Quoted in *Aparārka*, p. 722; *Mitākṣarā*, p. 850; *Vivādaratnākara*, p. 516; *Vivādachintāmaṇi*, p. 221; *Madanapārijāta*, p. 666; *Smṛtichandrikā*, p. 661; *Parāsharamādhava*, p. 371; *Vīramitrodaya*, p. 695; *Vyavahāramayūkha*, p. 158; *Vibhāgasāra*, 11. 1—11.]

NOTES

If the married daughters have died, the 'honorific trifle' that would have been given to her should be given to their daughters, by the maternal uncles. '*Prītipūrvakam*,' of their own free will.—(*Sarvajñanārāyaṇa.*)

If there are unmarried daughters of the daughters, they should be given something out of the property of their maternal grandmother, '*lovingly*,'—*i.e.*, in a manner in which they may be honoured.—(*Kullūka.*)

'*Prītipūrvakam*';—it is for pleasing her; there is no compulsion.—(*Rāghavānanda.*)

Something should be given to the sisters.—The word '*Prītipūrvakam*' indicates that it must be given.—(*Nandana.*)

The daughter's daughters should be given the share that they deserve.—(*Rāmachandra.*)

If the mother has left daughters as well as daughter's daughters, the latter should be given something.—(*Mitākṣarā*, p. 850.)

'*Yathāmshataḥ*' [*v.l.*, for '*Yathārhataḥ*'], according as the property is large or small.—(*Vivādaratnākara*, p. 516.)

'*Teṣām*,'—of the daughters.—Where there are daughters as well as daughter's daughters, the latter shall be given only something, not a regular share in the property.—(*Madanapārijāta*, p. 666.)

'*Yathārhataḥ*,'—*i.e.*, after considering the character of the persons, the use to be made of the property, the poverty of the persons concerned and so forth.—'*Lovingly*'; the implication is that if the uncles are affectionately inclined towards the nieces, they will give them 'something,' otherwise not.—(*Smṛtichandrikā*, pp. 661-662.)

This rule is for cases where there are daughters as well as daughter's daughters.—(*Parāsharamādhava*, p. 371.)

'*Yathārhataḥ*'—after consideration of the use to be made of the property, the poverty of the persons concerned and so forth.—(*Vīramitrodaya*, p. 695.)

Something should be given to the daughter's daughters also.—(*Vyavahāramayūkha*, p. 158.)

'*Prītipūrvakam*,'—*i.e.*, if there is loving kindness, then alone it should be given.—(*Vibhāgasāra*, 11. 2. 1.)

48. मनु 9. 131.] मातुस्तु यौतकं यत् स्यात् कुमारीभाग एव सः ।

Whatever may be the *Yautaka* (separate property) of the mother is the share of the unmarried daughter alone.—(*Manu*, 9. 131.) [Quoted in *Aparārka*, p. 721; *Vivādaratnākara*, p. 517; *Vivādachintāmaṇi*, p. 222; *Vivādachandra*, 22. 2—9; *Smṛtichandrikā*, p. 662; *Parāsharamādhava*, p. 372; *Dāyabhāga*, p. 82; *Vīramitrodaya*, p. 696; *Vyavahāramayūkha*, p. 158; *Vibhāgasāra*, 11. 2—4.]

NOTES

The term '*Yautaka*' is usually applied to the separate property of a woman, of which she alone is the sole owner. Others apply it to only what she receives at the time of marriage, and not to all that belongs to her; as it is only over the former that she has an absolute right (and which on that account can be called absolutely *her own*); as it has been declared that 'women become their own mistresses on obtaining presents at their marriage.'—Others again hold that the term applies to the savings that the young woman makes out of what she receives from her husband for her clothing and ornaments and for the daily household expenses.—'*Is the share of the unmarried daughter alone.*' Since the text adds the qualification 'unmarried,' it is clear that what is said here does not apply to one who has been married. Further, the term '*eva*,' 'alone,' sets aside the implications of the context (which is that of the *Appointed Daughter*); consequently what is said here cannot apply to the *Appointed Daughter* (who would be *married*, as the 'appointing' is, as a rule, done at the time of marriage).—(*Medhātithi.*)

'*Yautakam*' is *Strīdhana*;—'*Kumārībhāgaḥ*,' is the share of the childless daughter;—even though there be the son, or the Appointed Daughter, or the son of the Appointed Daughter. Thus then, even apart from the case of the Appointed Daughter, the mother's *Strīdhana* must go to her unmarried daughters.—(*Sarvajñanārāyaṇa.*)

On the mother's death, the mother's property goes to her unmarried daughter; the sons have no share in it.—(*Kullūka.*)

'*Yautaka*' is the property obtained by the mother from her father's family. The particle '*eva*' indicates that the said property goes to the unmarried daughter, even when the *son of the Appointed Daughter* is there.—(*Nandana.*)

'*Yautaka*' is *Strīdhana*.—(*Rāmachandra.*)

This means that the unmarried daughter has the first claim on the mother's property.—(*Aparārka*, p. 721.)

'*Yautaka*' here stands for what has been given to the woman at the time of marriage, by her father and others. Halāyudha, however, has explained the term as standing for what is given to the woman for the purchase of vegetables and curries and which has augmented by her efficient management.—In such property of the mother's, neither sons nor married daughters have

any share; but even married daughters, if childless or unfortunate, receive equal shares in it.—(*Vivādaratnākara*, p. 517.)

'*Yautaka*' is that which has been obtained at the time of marriage from the father and others.—(*Vivādachintāmaṇi*, p. 222.)

'*Yautaka*' is what is presented by people in general to the bride and bridegroom at the time of marriage, when they are seated together on one seat. The author of the *Nighaṇṭu* also has defined it as 'what has been given to the bride and bridegroom.' But according to Devasvāmin, '*Yautaka*' is the name given to what has been obtained by the woman from her father's house, as distinguished from that obtained in her husband's house.—But this view is not acceptable; the distinction being merely imaginary.—If there are several *unmarried daughters*, the mother's *Yautaka* has to be divided equally among them.—(*Smṛtichandrikā*, p. 662.)

'*Yautaka*' is what has been obtained from the father's family.—(*Parāsharamādhava*, p. 372.)

'*Yautaka*' is what is obtained at the time of marriage.—(*Dāyabhāga*, p. 82.)

'*Yautaka*' is what is given to the bride and bridegroom when they are *seated together* at the time of marriage.—'*Yautaka*' and '*Yautuka*' both forms are correct.—The opinion of Devasvāmin that '*Yautaka* is the name given to what the woman has obtained from her father's house, as distinguished from what she has got from her husband's family,'—cannot be accepted; as the distinction is purely imaginary.—When there are several *unmarried daughters*, the property shall be divided equally among them.—(*Viramitrodaya*, p. 696.)

'*Yautaka*' is what is obtained at the time of marriage and on other occasions by the woman seated together with her husband.—(*Vyavahāramayūkha*, p. 158.)

This rule applies only to those cases where, apart from the *Yautaka*, there is other *Strīdhana* which could be shared by the sons also. If that were not so, then the son who would perform the *Shrāddha* for the mother would become entirely excluded from sharing in her property.—(*Vibhāgasāra*, 11. 2—4.)

49. बौधायन] मातुरलङ्कारं दुहितरः सौदायिकं [*v.l.*,साम्प्रदायिकं] लभेरन्, अन्यद्वा ।

The ornaments received by the mother at the time of marriage goes to the daughters, as also other things.—(*Baudhāyana*.) [Quoted in *Vivādaratnākara*, p. 495; *Vibhāgasāra*, 6. 2—10.]

NOTES

The daughter obtains the ornaments received by the mother at the time of marriage; and if there is anything else that had been received by the mother at the time of marriage,—that also goes to the daughter.—(*Vivādaratnākara*, p. 495.)

50. शङ्खलिखित] विभज्यमाने दायेभ्यः स्वकन्याऽलङ्कारं वैवाहिकं स्त्रीधनं च लभते ।

When the property is being divided, the deceased's own daughter obtains the marriage-ornaments as also the *Strīdhana*.—(*Shāṅkha-Likhita.*) [Quoted in *Vivādaratnākara*, p. 495 ; *Vibhāgasāra*, 6. 2–10.]

NOTES

The daughter obtains the anklet and other ornaments of the mother.—(*Vivādaratnākara*, p. 495.)

51. वसिष्ठ 17.46.] मातुः पारिणाय्यं स्त्रियो विभजेरन् ।

The daughters shall divide among themselves the mother's marriage-present (or toilet-articles).—(*Vashiṣṭha*, 17. 46.) [Quoted in *Vivādaratnākara*, p. 517; *Vivādachintāmaṇi*, p. 222; *Vivādachandra*, 23. 1. 1; *Dāyabhāga*, 82; *Smṛtitattva II*, p. 185; *Vibhāgasāra*, 11. 2–5.]

NOTES

'*Pāriṇāyyam*,'—clothes, mirror, bracelets and so forth.—(*Vivādaratnākara*, p. 517.)

'*Pāriṇāyyam*,'—clothes, mirror, comb and such things.—(*Vivādachintāmaṇi*, p. 222.)

What belonged to the mother at the time of marriage is to be divided among the daughters.—(*Vivādachandra*, 23. 1. 1.)

'*Pāriṇāyyam*'—property obtained at marriage.—(*Dāyabhāga*, p. 82.)

What has been obtained by the mother at the time of marriage goes first to the unmarried daughter, and in her absence, to the married daughter,—even when there are sons.—(*Smṛtitattva II*, p. 185.)

'*Pāriṇāyyam*,' clothes, mirror and such things.—(*Vibhāgasāra*, 11. 2–6.)

52. मनु 9.198] स्त्रियास्तु यद् भवेद्वित्तं पित्रा दत्तं कथञ्चन ।
ब्राह्मणी तद्धरेत् कन्या तदपत्यस्य वा भवेत् ॥

The property that may have been given to a woman by the father in any manner shall be taken by the daughter of the Brāhmaṇa-caste ; or it shall belong to the child of that daughter.—(*Manu*, 9. 198.) [Quoted in *Aparārka*, pp. 721, 753;

Mitākṣarā, p, 352 ; *Vivādaratnākara*, p. 518 ; *Madanapārijāta*, p. 667 ; *Smṛtichandrikā*, p. 666 ; *Parāsharamādhava*, p. 372 ; *Dāyabhāga*, p. 83 ; *Vīramitrodaya*, p. 699 ; *Smṛtitattva II*, p. 186 ; *Vyavahāramayūkha*, p. 159 ; *Dāyanirṇaya*, 11. 2–10]

NOTES

What had been given to a woman by her father shall be taken by that daughter of hers who belongs to the Brāhmaṇa caste ; and it is not to be shared by her brothers. If the daughter is not alive, the property shall be given to her child.--The term '*Kanyā*' stands for *daughter in general*.—What is meant is that if a Brāhmaṇa has two wives—one of the Brāhmaṇa and the other of the Kṣattriya caste,—if the *Kṣattriya* wife has some property given to her by her father, that also should go to the daughter of the Brāhmaṇa wife (her step-daughter)—(*Sarvajñanārāyaṇa.*)

In a case where a Brāhmaṇa has wives belonging to several castes,—if any of his wives belonging to the Kṣattriya and other lower castes dies childless,—the property that may have been given to that wife by her father should go to the daughter of her Brāhmaṇa co-wife ; even though there may be sons and daughters born of her other co-wives belonging to her own caste ; or to other lower castes ; and if the Brāhmaṇa step-daughter is not alive, it would go to the child of that step-daughter.—(*Kullūka.*)

If a Brāhmaṇa has three additional wives belonging to three lower castes, Kṣattriya, Vaishya and Shūdra,—and these die childless,—the property in question is to be taken by their Brāhmaṇa step-daughter ; if this step-daughter is not alive, then to the child of that daughter ; if there is no such child, then to any Brāhmaṇa.—The term '*woman*' here stands for the woman belonging to a caste other than the Brāhmaṇa whom the Brāhmaṇa has married.—'*The child of that daughter*,' *i.e.*, the son of the daughter of the Brāhmaṇa wife.—(*Rāghavānanda.*)

'*Kathañchana*,'—in any manner.—The Brāhmaṇa daughter shall take the property, not the Kṣattriya or other daughters. (*Nandana.*)

The property that has been given by their father to the Kṣattriya or other wives at their marriage shall go to the daughter of the Brāhmaṇa wife previously married by their husband.—'*Vā*' introduces another option ; the property shall belong to the child of the daughter.—(*Rāmachandra.*)

The '*father*' is mentioned only by way of illustration.—'*Kanyā*,'—*i.e.*, the step-daughter ; that such is the meaning is clear from the qualification added '*Brāhmaṇī*,' 'belonging to the Brāhmaṇa caste.'—This refers to cases where a woman dies childless.—(*Aparārka*, p. 721.)

When one has a wife of a lower caste and she dies childless, her property is taken by the daughter of that co-wife of hers who belongs to the higher caste, even though she is born of a different womb ; and in the absence of such a daughter, by the child of that daughter.—'*Brāhmaṇī*' stands only for *a higher caste* ; so that the property of a childless *Vaishya* woman goes to the daughter of her *Kṣattriya* co-wife.—(*Mitākṣarā*, pp. 853-854.)

In a case where the woman has lost her husband and has no children,—but has co-wives, and these co-wives have children,—then the property that had been given to that woman by her father shall go to the daughter of her Brāhmaṇa co-wife; and if this daughter is not alive, then the property will go to the child of that daughter. The term '*pitrā dattam*,' '*that may have been given by the father*,' stands for all kinds of *Strīdhana*, according to *Asahāya* and *Medhātithi*,--says the author of the *Prakāsha*.—(*Vivādaratnākara*, p. 518.)

The terms '*woman*' and '*daughter*' stand here for the *step-mother* and the *step-daughter* respectively,—'*Brāhmaṇa caste*' stands for a *higher caste*; so that the property of the *Shūdra* wife would be taken (in order) by the daughter of her *Brāhmaṇa, Kṣattriya* or *Vaishya* co-wife; similarly the property of the *Vaishya* wife shall be taken (in order) by the daughter of her *Brāhmaṇa* or *Kṣattriya* co-wife; and the property of the *Kṣattriya* wife shall be taken by the daughter of her *Brāhmaṇa* co-wife.—Inasmuch as this text speaks of the property going to the daughter of a higher caste only, it follows that so long as the wives of the higher castes have sons, the property of these wives cannot be taken by the daughters of their co-wives of the lower castes.—(*Madanapārijāta*, p. 668.)

The phrase '*given by the father*' shows that what is here stated is to be done even when the husband, father and the rest are there. If a man has a wife belonging to a caste different from his own, and this wife has no offspring of her own, her property shall be taken by the daughter of the wife belonging to the same caste as the husband; and if this daughter is not alive, then to the child of that daughter. In a case where a man has several wives belonging to the same caste as himself,—if any one of them dies childless, her property goes to the daughter of the other wives, or to the offspring of that daughter. But it has to be borne in mind that in the case of the wife having been married by the *Brāhma* or other commended forms of marriage, the property goes to the husband, and in that of other forms of marriage, it goes to the man who had originally given the property to the woman.—(*Smṛtichandrikā*, pp. 666-667.)

The property of a wife of the lower caste goes to the daughter of her co-wife of the higher caste; and if that daughter is not alive, then to the child of that daughter.—(*Parāsharamādhava*, p. 372.)

The qualification '*given by the father*' shows that if something has been given at times other than the marriage, that also goes to the daughter; and the mention of the '*Brāhmaṇī*' is a mere reiteration (not meant to be significant). Or, for the purpose of avoiding the meaninglessness of the term '*Brāhmaṇī*,' the text may be taken to mean that—'if the Kṣattriya and other wives have died childless, the property given to them by their father is to be taken by the daughter of their Brāhmaṇa co-wife'; and the rule that 'the property of a childless woman goes to her husband' will not apply in such cases.—(*Dāyabhāga*, p. 88.)

This is an exception to the general rule that 'the property of the childless woman goes to her husband.'—The 'woman' meant here is the childless woman belonging to the Kṣattriya and the lower caste; and the term '*Brāhmaṇī*' stands for *the higher caste*.—The property of a childless *Vaishya* wife goes to the daughter of her *Kṣattriya* co-wife and the property of a

childless Shūdra wife goes to the daughter of her Vaishya co-wife. If these daughters are not alive, it goes to their children; and it is only when even these children are not there that the rule regarding the husband getting the property comes in.—(*Vīramitrodaya*, p. 699.)

The phrase '*given by the father*' implies that what is stated here applies also to what may have been given at times other than the marriage; and the term '*Brāhmaṇī*' is to be taken in the sense of *daughter in general*; or the meaning may be that in the event of the *Kṣattriya* or other wives dying childless, her property goes to the daughter of her *Brāhmaṇa* co-wife.—(*Smṛtitattva II*, p. 186.)

'*Vā*' stands for '*cha*,' 'and'; and by some it is understood that the property is to be divided.—The term '*Brāhmaṇī*' stands for the daughter of *the same* or *higher caste*—say some;—But authority for this view is still to be found.—(*Vyavahāramayūkha*, p. 159.)

Over that *Strīdhana* which had been given by the father to the dead woman, *after her marriage*,—the first title is that of her daughter; then of her son.—The term '*given by the father*' means that the daughter is entitled to all that the dead woman had received from her father, at the time of marriage as also at other times.—(*Dāyanirṇaya*, 12. 1. 1.)

53. पारस्कर] अप्रत्तायास्तु दुहितुः स्त्रीधनं परिकीर्तितम् ।
पुत्रस्तु नैव लभते प्रत्तायां तु समांशभाक् ॥

The *Strīdhana* has been declared to belong to the unmarried daughter, and the son does not get it. If, however, there is only a married daughter, then he shares it equally with her.—(*Parāshara*) [Quoted in *Parāsharamādhava*, p. 372.]

NOTES

This refers to such daughters as are 'unsettled' and not given away in marriage (?).—(*Parāsharamādhava*, p. 372.)

54. अर्थशास्त्र p. 16.] जीवति भर्तरि मृतायाः पुत्रा दुहितरश्च स्त्रीधनं विभजेरन् । अपुत्राया दुहितरः । तदभावे भर्ता ।

If a woman dies during her husband's lifetime, her sons and daughters shall divide her *Strīdhana* among themselves. If she has no sons, her daughters will take it. If she has no daughters, her husband will take it.—(*Arthashāstra II*, p. 16.)

55. अर्थशास्त्र p. 16.] अपुत्रा पतिशयनं पालयन्ती गुरुसमीपे स्त्रीधन-
मायुषः क्षयाद् भुञ्जीत। आपदर्थं हि स्त्रीधनम्। ऊर्ध्वं
दायादं गच्छेत्।

The sonless widow, faithful to her husband's bed and living with her elders, shall enjoy her *Strīdhana* till the end of her life; as *Strīdhana* is meant for times of distress. After her it shall go to her heir.—(*Arthashāstra II*, p. 16.)

56. कात्यायन] दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्।
बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्॥
भगिन्यो बान्धवैः सार्धं विभजेयुः सभर्तृकाः।
स्त्रीधनस्येति धर्मोऽयं विभागस्तु प्रकल्पितः॥

(*A*) In the absence of daughters the property goes to the sons; (*B*) what was given by the relatives goes to the husband in the absence of the relatives; (*C*) the sisters, along with their husbands, shall divide it with the relatives.—Such is the law relating to *Strīdhana* and its partition.—(*Kātyāyana.*) [Quoted in *Aparārka*, pp. 721, 753; *Vivādaratnākara*, p. 518; *Vivādachintāmaṇi*, pp. 222-223; *Smṛtichandrikā*, p. 664; *Vīramitrodaya*, p. 697; *Smṛtitattva II*, p. 186; *Vyavahāramayūkha*, pp. 158-159, 162; *Vibhāgasāra*, 11. 2—7; *Dāyanirṇaya*, 11. 2—8.]

NOTES

In the absence of daughters and their offspring the property goes to the sons.—(*Aparārka*, p. 721.)—The second line (B) refers to the case of women married under the *Āsura* and other three (condemned) forms of marriage.—(*Ibid.*, p. 753.)

The clothing and toilet-requisites,-the *Yautaka* and what had been received from the father—these three kinds of *strīdhana* go to the son, if there are no daughters;—the *Strīdhana* other than these goes to the persons mentioned before. In the absence of all those, to the husband.—(*Vivādaratnākara*, p. 518.)

(*A*) Clothing and toilet-requisites, what was given by the father at the time of the marriage performed under the '*Brāhma*' and other commended forms, and *Yautaka*—these three kinds of the mother's property go to the sons, if there are no daughters.—The woman's property, other than the three just mentioned, go, on her death, to both the son and the daughter; (*B*) What

had been given by relations other than the father, goes to the brother and sister, but the unmarried sister gets a share equal to that of the son, while the married one gets only some little share, such is the meaning of the third line; (C) '*Abhāve*,' in the absence of the son, the daughter and others—the property of the woman goes to her husband.—(*Vivādachintāmaṇi*, p. 223.)

(A) This refers to *unmarried* daughters; and to the '*Yautaka*' property.—(B) This refers to woman married in forms of marriage other than the said five (*Brāhma, Daiva, Ārṣa, Gāndharva* and *Prājāpatya*.)

(A) The mother's '*Pāriṇayyam*,' etc.,—received in connection with marriage performed under the *Brāhma* and other three (superior) forms—and also the *Yautaka* given by the husband—go to the daughter; and failing her, to the son. *Strīdhana* apart from the two just mentioned goes to both the son and the daughter.—(B) What had been given by her relatives shall go to the brother and sister; of these the unmarried sister receives a share equal to that of the won, while the married one shall receive some little thing. In the absence of these (brother and sister) the property shall go to the husband of the deceased. This is what has been declared by Manu in the text—'*Brāhmadaivārṣa-gāndharva, etc.*'—(*Vibhāgasāra*, 11. 2—9.)

(B) '*In the absence of relatives*'; this implies the absence of *brothers* also.—(*Dāyanirṇaya*, 11. 2—9.)

57. मनु 9. 195.] अन्वाधेयं च यद्दत्तं पत्या प्रीतेन चैव यत्।
पत्यौ जीवति वृत्तायां प्रजायास्तद्धनं भवेत् ॥

The *Anvādhēya* (subsequent) gift, as also the gift made to a woman by a loving husband, shall go to her offspring, if she dies while her husband is alive.—(*Manu*, 9. 195.) [Quoted in *Vivādaratnākara*, p. 516; *Smṛtichandrikā*, p. 650; *Vīramitrodaya*, p. 695; *Vyavahāramayūkha*, p. 157.]

NOTES

'*Anvādhēya*' is what had been given to the woman by her husband's relatives—and what had been given to her by her husband, at times other than that of dalliance,—both of these, even though these are not '*strīdhana*'—go to the woman's offspring if she dies during her husband's lifetime. The difference between what is *Strīdhana* and what is *not Strīdhana* is that in regard to the former, she is free to give it away or otherwise dispose of it; while in regard to the latter she is not free to do all this.—(*Sarvajñanārāyaṇa*.)

The '*Anvādhēya*' has been defined by Kātyāyana in the text '*Vivāhāt parato yattu, etc.*'—What has been obtained by the woman, after her marriage, from her husband's and father's families,—as also what has been given by the husband through love—*i.e.*, the '*Adhyagni*' and others described before,—all this property goes to the woman's children, if she dies during her husband's lifetime.—(*Kullūka*.)

On the death of the mother during the father's lifetime her property goes to her '*offspring*'—*i.e.*, son and the rest. '*Anvādhēya* has been defined by *Kātyāyana*.—(*Rāghavānanda*.)

'*Anvādhēya*'—what the woman obtains, after marriage, from her husband's family or from the family of her paternal and maternal relatives,—also what has been given to her by her husband pleased with her beauty and other qualities,—all this goes to the woman's '*offspring*'—son or daughter.—(*Nandana*.)

What has been subsequently obtained by the woman in her husband's family, and what is given to her by her husband—all this goes to her '*offspring*,'—*i.e.*, daughters,—if she dies during her husband's lifetime.—(*Rāmāchandra*.)

The purpose of this text is to preclude the husband's right to the two kinds of property here mentioned,—so says Halāyudha.—(*Vivādaratnākara*, p. 516.)

The '*Anvādhēya*,' as defined by Kātyāyana,—as also what has been given to the woman by her husband through his love for her,—these two kinds of *Strīdhana* of the dead mother go to her '*offspring*,' *i.e.*, son and daughter.—The 'Locative' case-ending in the words '*patyau jīvati*' enotes disregard; the meaning being 'even disregarding the living husband,'; *i e*, he has no right over the property in question. Inasmuch as this text has used the generic term '*prajā*,' 'offspring,'—which includes the male as well as the female children,—the property of the mother is to be divided among all her children,—and not that it will go first to the daughters and, only in their absence, to the sons.—(*Viramitrodaya*, p. 695.)

58. शङ्खलिखित] समं सर्वे सोदर्या द्रव्यमर्हन्ति कुमार्यश्च ॥

All the uterine brothers are entitled to the (mother's property; also the unmarried daughters.—(*Shankha-Likhita*) [Quoted in *Dāyabhāga*, p. 79.]

NOTES

In all these texts, the son is mentioned first, from which it follows that in whatever condition the son may be, his is the first claim on the mother's property.—(*Dāyabhāga*, p. 79.)

59. गौतम] प्रतिमातृ वा स्ववर्गे भागविशेषः ।

Among their own class (of daughter's daughters) shares shall be allotted to each in accordance with their mothers.—(*Gautama*) [Quoted in *Mitākṣarā*, 849.]

NOTES

When there are a number of grand daughters born of different daughters of the deceased woman, their shares shall be allotted in reference to

their mothers. [If the deceased had three daughters A, B and C, and A has three daughters, B has four daughters and C has five daughters' then the property of the deceased shall be divided into three equal parts, each of which shall be divided among all the daughters of each of the daughters A, B and C, and the property shall not be divided into twelve equal parts in reference to each of the granddaughters.—*Bālambhaṭṭi.*] —(*Mitākṣarā*, pp. 849-850.)

60. मनु 9. 381.] सर्वासामेकपत्नीनामेका चेत् पुत्रिणी भवेत् ।
सर्वास्तास्तेन पुत्रेण प्राह पुत्रवतीर्मनुः ॥

Among all the wives of one man, if one have a son, Manu has declared all of them to be "with son" through that son.—(*Manu*, 9. 183.)

NOTES

See II, 159.

61. देवल] सामान्यं पुत्रकन्यायां मृतायां स्त्रीधनं स्त्रियाम् ।
अप्रजायां हरेद् भर्ता माता भ्राताऽपि वा पिता ॥

When a woman dies her *Strīdhana* belongs in common to her sons and unmarried daughters. If she has died childless, the property is taken by her husband, mother, brother or father -(*Dēvala.*) [Quoted in *Vivādaratnākara*, p. 519; *Vīramitrodaya*, p 694; *Smṛtitattva II*, pp. 185, 187; *Dāyanirṇaya*, 12. 1. 2.]

NOTES

The husband shall take the property if the woman had been married by the *Brāhma* and other (commended) forms of marriage;— the mother shall take it if she had been married by the *Āsura* and other (deprecated) forms of marriage. The sense of the texts of Manu and Nārada also point to this same view of Dēvala. — (*Vivādaratnākara*, pp. 519-520.)

Inasmuch as the 'sons and daughters' have been spoken of by means of a copulative compound, it follows that their title to the property is joint. This rule applies to the *Anvādhēya* property and to the property received by the deceased as a loving gift from her husband.—(*Vīramitrodaya*, p, 694.)

Since the 'sons and daughters' have been mentioned in a copulative compound, the son and the daughter have equal rights over the property; and in the absence of either of them, the property goes to the other. In the absence of both these, the property goes to the *married* daughter.—(*Smṛtitattva II*, p. 185.)—In the absence of the 'husband, mother, brother and father,' the property goes to the sister's son and others, even in the presence of the father-in-law and the rest.—(*Ibid.*, p. 187)

This means that the son and the daughter have equal rights over all kinds of their mother's *Strīdhana*, except her dowry and what may have been given to her by her father (on those latter, the daughter having the prior claim),

—When the dead woman has left neither a son nor an unmarried daughter, her *Strīdhana* goes to her married daughter who has a son, as also to one who is expecting a son; in the absence of these, all *Strīdhana* except the dowry goes to the son's son; then to the daughter's son; then to the son's grandson; then to the son of the dead woman's co-wife; then to her co-wife's grandson; then to her great-grandson;—then to the childless and barren daughters of the dead woman, etc., etc.—(*Dāyanirṇaya*, 12. 1.)

62. याज्ञवल्क्य 2. 145.] बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च ।
अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः ॥

(*a*) What has been given by relatives, (*b*) the *Shulka* Nuptial-Fee, and (*c*) *Anvādhēya* gifts (received subsequently),—all this goes to her relatives, if a woman dies without offspring. —(*Yajñavalkya*, 2. 145.) [Quoted in *Vivādaratnākara*, p. 520; *Vivādachandra*, 23. 1–5; *Madanapārijāta*, p. 665; *Parāshara-mādhava*, p. 368; *Dāyabhāga*, p. 92; *Vīramitrodaya*, p. 702; *Vyavahāramayūkha*, p. 160.]

NOTES

'*Bandhudatta*'—what has been given by the father and other relatives;—'*Shulka*'—the '*Ādhivēdanika*' (solatium for supersession) and the like;—'*Anvādhēyaka*'—what has been given for the benefit of the offspring.—If a woman dies without offspring, all this property goes to the *Bāndhavas*, *i.e.*, the uterine brother and the rest; as declared by Gautama—'*Bhaginīshulkam, etc.*'—This rule becomes applicable only after the death of the mother.—(*Vishvarūpa*).

(*a*) '*Bandhudatta*,' what has been given by her *Bandhus*, *i.e.*, the paternal uncle, the maternal uncle and others,—(*b*) her '*Shulka*,'—and (*c*) her '*Anvādhēyaka* property,—these three include all kinds of *Strīdhana*;—on the woman dying without offspring, all this goes to her *Bāndhavas* (enumerated in *Yājñavalkya*, 2. 146, *et. seq.*).—(*Aparārka*.)

(*a*) What has been given by the girl's paternal and maternal relations;—(*b*) '*Shulka*,' the fee on payment of which the girl was given in marriage,—(*c*) '*Anvādhēyaka*,' gifts received after marriage (as defined by Kātyāyana). These constitute *Strīdhana*, the 'woman's property.'—When a woman dies 'without offspring,'—*i.e.*, without leaving a daughter, or daughter's daughter, or daughter's son, or son, or son's son,—her property is taken by her *Bāndhavas*,—*i.e.*, the husband, father and so forth.—(*Mitākṣarā*.)

(*a*) What has been given through love by her maternal uncle and other relatives,—(*b*) '*Shulka*,'—the property settled upon by the father and others as to be given to the bride and bridegroom,—and (*c*) '*Anvādhēyaka*,'—defined by Kātyāyana as 'what is received by a woman after her marriage from her husband's and father's families.' All this *Strīdhana* has been called '*Saudāyika*.'—

All this property goes to her '*Bāndhavas*'—*i.e.*, persons related to her,—if a woman dies without a daughter or son.—(*Vīramitrodaya-Ṭīkā* on *Yājñavalkya.*)

The '*Shulka*' meant here is that on payment of which the girl is given in marriage;—'*Anvādheyaka*' is a kind of *Strīdhana*.—'*Bāndhavas*,' uterine brothers.—This refers to cases where the woman has been married in the *Āsura* and other (deprecated) forms of marriage.—(*Vivādaratnākara*, p. 520.)

In cases where the woman has been married in the Āsura or other (deprecated) forms of marriage, what had been given by the brothers goes to the brothers, on the death of the woman.—(*Vivādachandra*, 23. 1–5.)

If a woman dies '*without offspring*,'—*i.e.*, without leaving a daughter or daughter's daughter, or son or son's son, her property is taken by her husband and other relatives.—(*Madanapārijāta*, pp. 665-666.)

(*a*) '*Bandhudatta*,'—what has been given by the girl's paternal and maternal relatives,—(*b*) '*Shulka*,' the fee or payment of which the girl has been given in marriage,—(*c*) '*Anvādheyaka*,' gifts made to the girl after her marriage.—(*Parāsharamādhava*, p. 369.)

What had been received by the woman, after marriage, from the husband's and father's families should go to her brothers.—'*Bandhudatta*,' is what has been given by the father and mother.—(*Dāyabhāga*, p. 92.)

'*Without offspring*'—*i.e.*, leaving no descendants, from the daughter down to the *great-grandson*.—'*Bāndhavas*,' relatives, mentioned in the texts.—(*Vīramitrodaya*, p. 702.)

This is with reference to that property which is included under the technical name of '*Strīdhana*.'—(*Vyavahāramayūkha*, p. 160.)

63. याज्ञवल्क्य] अप्रजस्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि ।
दुहितॄणां प्रसूता चेत्, शेषेषु पितृगामि तत् ॥

(*a*) The property of the childless woman goes to her husband, if she has been married in any of the four forms of marriage, *Brāhma* and the rest. (*b*) If she has been married in the other forms of marriage, it goes to her father. (*c*) If she has children, it goes to the daughter.—(*Yājñavalkya*, 2. 146.) [Quoted in *Smṛtichandrikā*, p. 664; *Madanapārijāta*, p. 665; *Dāyabhāga*, pp. 86, 89; *Vīramitrodaya*, p. 702; *Vyavahāramayūkha*, p. 160; *Dāyanirṇaya*, 11. 1–10.]

NOTES

In the case of *Strīdhana* other than the three enumerated in the foregoing verse (*Yājñavalkya*, 2. 145),—if the woman has been married in any of the four forms of marriage beginning with the 'Brāhma' (*i.e.*, *Brāhma*, *Daiva*

Ārṣa and *Prājāpatya*), her *Strīdhana* goes to her husband, if she has had no child; if she had children, then to her daughters.—(*Vishvarūpa.*)

(*a*) If a woman has been married in the *Brāhma* or *Daiva* or *Ārṣa* or *Prājāpatya* form of marriage,—and she has died childless,—her property goes to her husband; (*b*) but it goes to her father, if she has been married in the *Āsura* or *Gāndharva* or *Rākṣasa* or *Paishācha* form of marriage.—(*c*) If she has children, it goes to her daughters. This last refers to cases of all the eight forms of marriage; and the assertion of this is for the purpose of emphasising the fact that the property goes to the daughters even when there are sons; hence what is asserted here cannot be regarded as already included in the text '*Mātur duhitaraḥ, etc.,*' where no order of succession has been laid down.—(*Aparārka.*)

(*a*) In the case of the woman who has become a wife under any one of the first four forms of marriage—*Brāhma, Daiva, Ārṣa* and *Prājāpatya*—if she dies childless, her property described in the foregoing text goes first of all to her husband; and, failing him, to his nearest *Sapiṇḍas.*—(*b*) In the case of the woman who has been married under any of the last four forms of marriage—*Āsura, Gāndharva, Rākṣasa* and *Paishācha,*—if she dies childless, her property goes to her *parents,*—the term '*pitṛ*' in the compound '*pitṛgāmi*' standing for the '*mother and father*'; first to the mother, then to the father; and failing these, the property goes to the next nearest relations.—(*c*) In the case of women married in any of the eight forms of marriage, if a woman has left children, her property shall go to her daughters. The term '*daughter*' here stands for the *daughter's daughter*; as the right of the *daughters* themselves to inherit the mother's property has already been asserted by Yājñavalkya in the text '*Māturduhitaraḥ, etc.,*' (2. 117).—Thus then, when the mother dies, her property shall go first of all to the daughters; among these if one is married and another unmarried, it goes to the unmarried one; and only failing her, to the married daughters;—among these latter again, if one is settled and another unsettled, the property goes to one who is unsettled; as declared by Gautama in the text '*Strīdhanam duhitṝṇām, etc.*' ..... The rule here laid down applies to all the mother's property except the '*Shulka,*' *nuptial fee,* which goes to the uterine brothers of the deceased, as declared by Gautama in the text '*Bhaginishulkam, etc.*' .... (*d*) If there are no daughters of any kind, the property goes to the daughter's daughters, in accordance with second line of this same text—'*Duhitṝṇām prasūtā chet.*'—(*e*) If the granddaughters are the daughters of several daughters,—there being different numbers of them born of the different daughters,—the property shall be divided among them in accordance with the share of their respective mothers, as declared by Gautama in the text—'*Pratimātṛ vā svavarge, etc.*' (28. 17).—(*f*) If there are daughters and also daughter's daughters then the latter shall receive only something; as declared by Manu in the text—'*Yāstāsām syuḥ, etc.*' (9. 193).—(*g*) If even the daughter's daughters are not there, the property goes to the daughter's sons; as declared by Nārada in the text—'*Māturduhitarobhāve duhitṝṇām tadanvayaḥ*'—(*h*) If there are no daughter's sons, then the *Strīdhana* goes to the sons, according to the text '*Tābhyaṛte—nvayaḥ*' (*Nārada*).—Manu also has declared the rights of daughters as well as sons over the mother's property, in the text—'*Janayām*

samsthitāyān tu, etc.' (9. 192).—The *Strīdhana* of a childless wife belonging to a lower caste than the husband goes to her step-daughter born of a co-wife of a superior caste, even though she is not born of the womb of the deceased herself; failing such a daughter, the child of that daughter, according to Manu's text—'*Striyāstu yad bhavēt vittam, etc.*' (9. 198).—(*i*) If there are no sons of the deceased, the son's sons inherit the property of their paternal grandmother; according to Gautama's text—'Those who inherit the property should repay the debts;' and the text—'Sons and grandsons should repay the debts of the father and grandfather'—declares the grandsons also to be liable to pay the paternal grandmother's debts.—(*j*) If there are no son's sons, the property goes to the husband and other relations mentioned before.—(*Mitākṣarā.*)

[The *Bālambhaṭṭī* has the following notes:—When it is asserted that 'the step-daughter born of the co-wife *of a higher caste* inherits the property,' it follows that step-daughters born of co-wives of lower castes are not entitled to inherit the property if there are sons of the wife of the higher caste.—The 'Easterners' have held the following views:—"In view of (1) Manu's text, '*Jananyām samsthitāyām, etc.*' (2) Bṛhaspati's text, '*Strīdhanam syādapatyānām, etc.*' (3) Shaṇkha-Likhita's text, '*Samam sarve sodaryāḥ*:' and (4) Devala's text, '*Sāmānyam putrakanyānām, etc.*,'—where in every case the *son* is the first to be mentioned,—and as the *son* also is entitled to inherit the mother's property,—it follows that the property should be divided by the brothers and sisters (sons and daughters of the deceased) among themselves. This is the upshot of all the texts bearing on the subject. In fact, in Devala's text this is clearly indicated by the 'sons and daughters' being mentioned together in a copulative compound; further, if the unmarried daughter alone were entitled to inherit all the property of the mother, there would be no point in Manu and other writers specially mentioning this particularly in regard to the '*yautaka*' property.—So, as a matter of fact, the claims of the son and the unmarried daughter are equal, and between these two in the absence of one, the other inherits the property; and in the absence of both of these, it goes to the married daughters; among these those that have sons and those that are expected to get sons have equal claims; as both of them are expected to offer the cake to the deceased through their sons. It is for this reason that in the absence of all the aforesaid kinds of daughters, the property goes to the daughter's sons,—specially in view of Manu's text '*Dauhitropyakhilam, etc.*,'—and not to the barren or to the widowed childless daughters; as it is not possible for these to offer the cake through their sons. This is also implied by Nārada's text—'*Putrābhāvē cha duhitā, etc.*' When there is a son's son as well as a daughter's son, the property goes to the former; as the son has precluded the married daughter.... In the absence of all the aforesaid, down to the daughter's son, the property goes to the barren and the widowed daughters; since both of these are the progeny of the deceased, and it is only when there is no progeny that anyone else can be entitled to inherit the property. The texts of Gautama, Nārada, Kātyāyana and Yājñavalkya should be taken as referring only to the '*yautaka*' property; specially in view of their conflict with Devala's text; and '*yautaka*' is the name which, from its etymology, is applicable to what is received at the time of *union*, *i.e.*, marriage.

Such is the view of the *Kalpataru* also. It is for this reason also that Vashiṣṭha has declared that the '*Pāriṇāyya* property of the mother the female children shall divide among themselves,' and *Pariṇāyya* is what is got at the marriage."—This view of the 'easterners' is not right; as they have not understood the opinion of the sages. For instance, the fact of the 'sons *and* daughters' being mentioned as entitled to inherit a property can be explained even without regarding their claims as simultaneous; as has already been shown in course of the explanation of that text. Then, again, the mere mention of a person (son or daughter) as entitled to inherit is sufficient to declare his title; consequently the fact of anyone being mentioned before another cannot be treated as a ground for his title; but even so, in general texts we find that the 'daughters' are mentioned before the 'sons,' and it has also been shown that the daughter is more nearly related to the mother than the son (because the constituents of the mother's body enter more largely into the constitution of the daughter's body than into that of the son, whose body contains a larger portion of the father's body). Further, if the title of the son and daughter were simultaneous, then they would be entitled only when *both*, not when only one of them, would be there; and in that case the use of the pronoun '*tayoḥ*' would have no sense. For instance, in the case of the laying of fire, to which the right of the husband and wife is simultaneous and joint, neither one of them alone is entitled to perform it. In the ordinary world also any work to which two or more persons are jointly and simultaneously entitled, is never done by any one of them singly... For these reasons the right explanation is the one given by Vijñāneshvara.]

On the death of the wife, if there is no offspring of that wife, her property goes to the husband,—The particle '*api*' is meant to include the *Gāndharva* form of marriage also; as this would be in accord with Manu's text—'*Brāhmadaivārṣa etc.*,' (where the *Gāndharva* is also mentioned) Thus then the meaning is that in the case of the woman married in any of these five forms of marriage,—if she dies leaving no offspring, beginning from the daughter and ending with the son's son,—her property goes to her husband, not to her mother or other relatives.—(*Smṛtichandrika*, p. 664.)

(*a*) When a woman without any offspring, in the form of the daughter, the daughter's son, the son and the son's son, dies,—and she is one who had been married in any of the four forms of marriage, *Brāhma* and the rest,—her property goes to her husband; if the husband is not there, it goes to the nearest relatives on the husband's side; failing these latter, to those who are slightly remoter.—(*b*) In the case of the woman who has been married in the *Āsura* or *Gāndharva* or *Rākṣasa* or *Paishācha* form of marriage,—dying, her property goes to her parents; first to the mother, and failing her, to the father; and failing the father, to the nearest relatives on the father's side and so forth.—(*c*) In the case of a woman married in any of the eight forms of marriage, if she dies leaving children, her property goes to her daughters—*i.e.*, to the daughter's daughters. If the term '*daughter*' here were taken as standing for the daughter herself, then the present text would be a mere repetition of what has gone in the text—'*Maturduhitaraḥ sheṣam, etc.*'—Among the daughter's daughters also, if some are married and others unmarried, it goes to the unmarried ones. [Among the married ones] if some are settled and

others unsettled, it goes to the latter.—If among the daughter's daughters, there are different numbers born of different mothers, the property shall be divided among them in accordance with the share of their respective mothers.—*(Madanapārijata*, pp. 665-666.)

What has been obtained at the Brāhma and other forms of marriage, in the shape of the '*Adhyagni*' *Strīdhana*, goes, at her death, first of all to her daughters; among those also, first to those who are unmarried; if there is no unmarried daughter, it goes to the daughter that has been betrothed; in the absence of the betrothed daughter, to the married daughter; if there are no daughters at all, then the son inherits it; the husband being entitled to inherit only in cases where the woman has no child at all.—(*Dāyabhāga*, p. 86.)—The phrase '*brāhmādiṣu chaturṣu*,' means *those four of which Brāhma is the fore-runner, i.e.*, the *Daiva*, *Ārṣa*, *Prājapatya* and *Gāndharva*; these along with the *Brāhma* make the five forms that are meant here, and which have been mentioned by Manu also (9. 196). In a case where the woman has been married in any of these five forms of marriage, when she dies, her property goes to her husband.—The term '*prajā*' here stands for *offspring* (progeny).—It is not right to take this to mean that in the case of a woman married in any of these five forms of marriage, whatever property she may have got, either before on after the marriage, all of it goes to the husband. Because the mention of the '*Brāhma and other forms of marriage*' is meant to indicate the *time* (of obtaining the property). If it were meant to refer to the *woman*, the form of marriage would have been spoken of by means of a word with the singular ending . . . We must therefore take the text as referring to that *Strīdhana* alone which has been obtained by the woman *at the time of marriage*; such is the explanation given by Vishvarūpa which we must accept.—(*Ibid.*, pp. 89-90.) [There is nothing in the words of *Vishvarūpa* to justify the assumption that he holds this view.]

The four forms of marriage are the *Brāhma*, *Daiva*, *Ārṣa* and *Prājāpatya*; and the particle '*api*' includes the *Gāndharva* also; or the compound '*brāhmādiṣu*' may be construed in such a way as to include four forms in addition to the *Brāhma*. The meaning is that (*a*) the property of a woman married in any of these forms of marriage, who dies childless, goes to her husband; and failing the husband, to the husband's nearest relatives; (*b*) the property of the woman married in any of the other forms of marriage—*i.e*, *Āsura* and the rest,—goes to her father, *i.e.*, to the mother and the father; there also first to the mother, then to the father; failing the parents, it goes to the parents' nearest relatives; and (*c*) in the case of a woman married in any of all the eight forms of marriage, if the deceased has left children, her property goes to the daughters. The term '*daughters*' here stands for the *daughter's daughters*.—(*Vīramitrodaya*, pp. 70?-703)

Here Yājñavalkya lays down the rule regarding the particular 'relatives' to whom the *Strīdhana* is to go; and he does this on the basis of the form in which the deceased has been married —(*Vyavahāramayūkha*, p. 160.)

The use of the common term 'child' implies that the property goes to the husband only whom the woman has left neither daughter nor son (*Dāyanirṇaya*, 11. 1—10)—This refers to the 'husband' by the '*Brāhma*' form of marriage; as is clear from Manu (9. 196) (see Sec. 63 below).—(Ibid)

64. मनु 9, 196-197.] ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्धनम् ।
अप्रजायामतीतायां भर्तुरेव तदिष्यते ॥
यत्त्वस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु ।
अतीतायामप्रजायां [*v.l.* जसि] मातापित्रो-
स्तदिष्यते ॥

(A) It is ordained that the property of a woman married by the *Brāhma*, the *Daiva*, the *Ārṣa*, the *Gāndharva*, or the *Prājāpatya*, form shall go to her husband alone, if she dies childless. (B) But the property given to a woman on the *Āsura* or other (inferior) forms of marriage, has been held to belong to the parents, upon her dying childless.—(*Manu*, 9. 196-197.) [Quoted in *Aparārka*, p. 753; *Vivādaratnākara*, p. 519; *Vivādachintāmaṇi*, p. 223; *Vivādachandra*, 23. 1—3, 4; *Smṛtichandrikā*, p. 664; *Parāsharamādhava*, p. 373; *Dāyabhāga*, pp. 87, 89; *Vīramitrodaya*, pp. 702, 703; *Smṛtitattva II*, p. 186; *Vyavahāramayūkha*, p, 161; *Vibhāgasāra*, 11.2—11.]

NOTES

(A) The property of the woman married by the *Brāhma*, and other forms of marriage,—either *Strīdhana*, or otherwise- goes to her husband, if she dies childless; it goes to her children, if she leaves any children.—(B) '*To the parents*,'—not to the husband.- (*Sarvajñanārāyaṇa*.)

(A) In the five kinds of marriage, Brāhma and the rest, the six kinds of *Strīdhana*, that belongs to a woman, go to her husband, if she dies childless.—(B) The six kinds of *Strīdhana*, belonging to a woman, in the *Āsura*, and other forms of marriage, go to her parents, if she dies childless.—(*Kullūka*.)

(A) If a woman dies childless, her property obtained from her father and others at the five forms of marriage, goes to her husband.—(B) Property connected with the *Āsura*, and other forms of marriage belongs to the parents.—'*Atītāyām*' on her death.—(*Rāghavānanda*.)

(A) The property that has been given to the woman at the five forms of marriage;- the phrase '*Striyaidattam*' has to be added.—(*Nandana*.)

(A) The property that had been obtained at the *Brāhma*, *Daiva*, *Ārṣa*-*Gāndharva* or *Prājāpatya* form of marriage by a woman goes, at her death, to her husband.—(B) What has been obtained at the *Āsura*, and other forms of marriage goes to the girl's parents.—(*Rāmachandra*.)

In the case of the woman married by the *Gāndharva* form, there should be option (*i.e.*, her property goes either to the husband or to the parents); because in the second text (B), it is stated that in the case of the marriage having in a form included among the '*Āsura and the rest*' (where the *Gāndharva*, also comes in), the property goes to the parents.—(*Aparārka*, p. 753.)

[1] *Aprajasi,*' (*v.l.* '*aprajāyān*') childless. –(*Vivādaratnākara*, p. 519); *Vivādachintāmaṇi*, p. 223.)

In the event of the marriage having been in any of the four forms beginning with *Brāhma*, the property of the childless woman goes to her husband; and in the case of the *Āsura*, and other forms, it goes to her mother and father.–(*Vivādachandra*, 23 1–3.)

(A) If a woman has been married in any of the five forms of marriage mentioned here, and she dies without leaving any offspring from the daughter down to the son's son,– her property goes to her husband, and not to her mother or other relations.–(*Smṛtichandrikā*, p. 664.)

(A)–(as in *Smṛtichandrikā*)–(B) if a woman has been married in the *Āsura*, *Rākṣasa* or *Paishācha* form, her property goes to her mother and father.–(*Parāsharamādhava*, p. 373.)

This refers only to such property as has been *given to her at the marriage*, not to all kinds of property; the construction being '*Brāhma*,..., *yaddattam*,–*Āsurādiṣu yad dattam*.'–(*Dāyabhāga*, p. 88) –The property that has been obtained by the woman at the time that the marriage is going on, goes to her husband, if she dies without offspring. '*Prajā*' is offspring. It does not mean that 'whatever property has been obtained by a woman married in one of these forms of marriage, before as well as after the marriage,– all that goes to the husband'; because the mention of the forms of marriage is meant to indicate the time of the obtaining of property.–(*Ibid.*, p. 89.)

The property of the woman married in the *Brāhma*, or other forms of marriage,–in the event of her dying childless,–goes to her husband; failing the husband, to the husband's nearest relatives; and that of one married in the *Āsura*, and other forms, goes to her parents,–first to the mother, then to the father.–(*Vīramitrodaya*, p. 702.)

The property obtained by a woman *at the time of her marriage* done under any of the five forms of marriage, *Brāhma* and the rest, shall go to her husband; and that obtained at the time of marriage done under the other three forms, *Āsura* and the rest, shall go to her mother, then to her father.–(*Smṛtitattva II*, p. 186.)

That the property of the woman married under the *Brāhma* and other forms (*Daiva*, *Ārṣa*, *Prājāpatya*) shall go to the husband refers to Brāhmaṇas, for whom these four alone are the lawful forms of marriage. As for the *Gāndharva*, that is also lawful for the *Kṣattriya*; so in his case the property of the wife married under that form shall go to the husband.–(*Vyavahāramayūkha*, p. 161.)

(A) Manu and others have described the eight forms of marriage–*Brāhma*, and the rest, and they have also said which one should be adopte and which not. Among those to be adopted are the *Brāhma*, *Daiva*, *Ārṣa* *Gāndharva*, and *Prājāpatya*; and it is to cases of these forms of marriage that the rule laid down in the text is applicable.–(B) '*Āsurādiṣu*'–in the case of marriages performed in the *Āsura*, *Rākṣasa*, and '*Paishācha*, forms;–'*Aprajasi*,' childless;–'*Mātāpitroḥ*,'–this is not inconsistent with Yajñavalkya's assertion that the property is *Pitṛgāmi*,' because in the latter expression, the term '*Pitṛ*' stands for the *mother and father*.–(*Vibhāgasāra*, 12. 1–3.)

65. गौतम 28. 23.] भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुः। पूर्वं चेत्येके।

The Nuptial fee of the sister goes *to her uterine brothers, after the mother* [or, according to *Aparārka*, to the uterine brothers and after them to her mother]; also before the mother, say some.—(*Gautama*, 28. 23.) [Quoted in *Aparārka*, p 754; *Mitākṣarā*, p. 849; *Vivādaratnākara*, p. 520; *Vivāda-chintāmaṇi*, p. 223; *Madanapārijāta*, p. 668; *Smṛtichandrikā*, p. 665; *Dāyabhāga*, p. 95; *Vyavahāramayūkha*, p. 162.]

NOTES

The Nuptial fee that had been given for the woman married in the *Āsura* form goes to her uterine brothers; and failing them, to her mother.—(*Aparārka*, p. 754.)

The Nuptial fee of the woman goes to her uterine brothers.—(*Mitākṣarā*, p. 849.) [The *Bālambhaṭṭī* adds '*ūrdhvam mātuḥ*, means *after the death of the mother*. So also the *Kalpataru*; the '*mother*' meant here is the *sister* of the 'brothers'; thus the meaning is that on the death *of their sister* ('*Mātuḥ*' of the text), her Nuptial fee goes to her uterine brothers, even when she has left heirs, from the daughter down to the son's son. From this it follows that we reject the wrong explanation that—"*Urdhvam mātuḥ*" is a separate sentence, and the meaning of the text is that the said property goes first to the uterine brothers, —after them (*Ūrdhvam*) to her mother (*Mātuḥ*),—and failing both, the uterine brother and the mother, to the father.']

The property obtained at marriage by their sister married in the *Āsura*, or some other inferior form of marriage, goes to her uterine brothers, on the death of their mother,—also before the mother's death.—'*Cha*' standing for '*Api*';—the meaning being that according to some people, even before the mother's death, the said property of the sisters goes to her uterine brothers.—This is the opinion of other people.—says Halāyudha.—(*Vivādaratnākara*, p. 520.)

This refers to cases where the woman has been married by the *Āsura*, *Rākṣasa*, or *Paishācha* form.—(*Vivadachintāmaṇi*, p. 223.)

Even when the sister has left heirs, from the daughter down to the son's son, her Nuptial fee shall be taken by her uterine brothers.—(*Madanapārijāta*, p. 668.)

Though the Nuptial fee had been paid by the husband and others, yet it does not go to them; it becomes the property of the uterine brothers of the woman, and failing them, to her mother.—(*Smṛtichandrikā*, p. 665.)

The property goes first of all to the uterine brothers; in their absence, to the mother, and in her absence, to the father.—'*Also before*,'—this is the opinion of others.—(*Dāyabhāga*, p. 95.)

66. वृद्धकात्यायन] पितृभ्यां चैव यद्दत्तं दुहितुः स्थावरं धनम्।
अप्रजायामतीतायां भ्रातृगामि तु सर्वदा॥

The immovable property given to the daughter by her parents should always go to her brother, if she dies without offspring.—(*Vṛddha-Kātyāyana.*) [Quoted in *Dāyabhāga*, p. 92; *Vīramitrodaya*, p. 704; *Smṛtitattva II*, p. 185.] *Dāyanirṇaya 11.* 2. 4.]

NOTES

The brother's title is based entirely upon the fact of the childlessness of the woman. The term '*Sarvadā*' 'always' shows that we should accept Vishvarūpa's view that the property of the woman married in any of the eight forms of marriage—from the *Brāhma* down to the *Paishācha*,—must go to the brother.—The mention of the 'immovable property' automatically implies the other kind of property also.—(*Dāyabhāga*, p. 92)

'*Always*,'—*i.e.*, in all the eight forms of marriage.—(*Dāyanirṇaya*, 11. 2—5.)

67. शङ्ख] शुल्कं च स्वयं वोढा ।

The husband himself is entitled to the nuptial fee.—(*Shaṅkha.*) [Quoted in *Vivādaratnākara*, p. 521; *Smṛtichandrikā*, p. 665; *Vyavahāramayūkha*, p. 162.]

NOTES

This refers to cases where the bride dies before the completion of the marriage; this would be in accordance with the text of Yājñavalkya—'*Mṛtāyāndattamādadyāt.*'—(*Smṛtichandrikā*, p. 665.)

This should be taken as referring to cases where the girl dies before the marriage.—(*Vyavahāramayūkha*, p. 162.)

68. विष्णु] सर्वेष्वेव (विवाहेषु) प्रसूतानां तद्धनं दुहितृगामि ।

In the case of women married in any of the forms of marriage, if they have children, their property goes to the daughter.—(*Viṣṇu.*) [Quoted in *Vivādaratnākara*, p. 517; *Bālambhaṭṭi*, 2. 145.]

69. नारद] स्त्रीधनं तदपत्यानां भर्तृगाम्यप्रजासु च ।
ब्राह्मादिषु चतुर्ष्वाहुः पितृगामीतरेषु च ॥

The woman's property goes to her children; in the event of their having no children, if they had been married in the first four forms of marriage, it goes to the husband; if in any of the other forms, it goes to the father.—(*Nārada.*) [Quoted in *Vivādaratnākara*, p. 519.]

NOTES

'*Four forms,*'—this is not meant to exclude the fifth ; so that in the case of women married in any of the five forms—*Brāhma, Daiva, Ārṣa, Gāndharva* and *Prājāpatya,*—if they die childless, their property goes to the husband ; in the case of the other forms—*Rākṣasa, Āsura* and *Paishācha,*—it goes to the father.—This refers to property obtained at the time of marriage.—(*Vivādaratnākara*, p. 519.)

70. कात्यायन] आसुरादिषु यल्लब्धं स्त्रीधनं पैतृकं स्त्रियाः ।
अभावे तदपत्यानां मातापित्रोस्तदिष्यते ॥

Whatever *Strīdhana* had been obtained by the woman from her parents is held to belong to her mother and father, if she has no children.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 665 ; *Parāsharamādhava*, p. 373.]

NOTES

'*Paitṛkam*'—received as gift from the parents.—'*Apatyānām abhāve,*' in the absence of children born to a woman married in the *Āsura* and other inferior forms of marriage. '*Child*' here stands for all those offsprings—from the daughter down to the son's son,—who have been declared to be heirs to *Strīdhana*,—(*Smṛtichandrikā*, p. 665.)

71. यम] आसुरादिषु यद्द्रव्यं विवाहेषु प्रदीयते ।
अप्रजायामतीतायां पितैव तु धनं हरेत् ॥

Whatever property has been given at the *Āsura* and other (inferior) forms of marriage is taken by the father, if the woman dies without offspring.—(*Yama.*) [Quoted in *Smṛtichandrikā*, p. 665 ; *Dāyabhāga*. p. 88.]

NOTES

'*Has been given*'—by the father.—(*Smṛtichandrikā*, p. 665.)

What is given in course of the whole performance of marriage,—not what is given before or after the marriage :—this refers to the '*yautaka*' only—. (*Dāyabhāga* p. 88)

72. मनु 9. 135.] अपुत्रायां मृतायां तु पुत्रिकायां कथञ्चन ।
धनं तत्पुत्रिकाभर्ता हरेतैवाविचारयन् ॥

If the appointed daughter happens to die without a son, the husband of that appointed daughter may, without hesitation,

take that property.—(*Manu*, 9. 135.) [Quoted in *Aparārka*, p. 754 ; *Vivādaratnākara*, p. 520 ; *Vivādachandra*, 23. 2-2, 3 ; *Parāsharamādhava*, p. 374.]

NOTES

See Ch. III. 68. p. 487.

'*Dhanam*'—any property that she might have got or inherited from her father, during his lifetime and after his death.—(*Sarvajñanārāyaṇa.*)

When an appointed daughter dies sonless, her property is to be taken by her husband unhesitatingly. The appointed daughter having been declared to be 'equal to the son,' it would follow that her property should go to her father, on the analogy of the son's property going to the father ; and it is with a view to preclude this notion that we have this text.—(*Kulluka.*)

If a sonless appointed daughter dies, her property goes to her husband,—'*Unhesitatingly*'—without entertaining any such idea as that the property should go to the woman's father, just as the property of her son would ; because it is only the son of the appointed daughter and not she herself that is meant to benefit the girl's father ; hence her property goes to the husband, not to the father.—(*Rāghavānanda.*)

The property should be taken by the husband, not by the girl's uncle or other relatives.—(*Nandana.*)

This refers to cases where the daughter has been 'appointed' by her father with the formula 'the son that is born of this girl shall be my son' ; as regards the daughter who is 'appointed' with the formula 'This girl is my son,' the rule is laid down by Shaṅkha-Likhita in the text—'*Pretāyāḥ putrikāyāḥ, etc.*,'—(*Aparārka*, p. 754.)

This refers to cases where the dead girl has no unmarried daughter or sister.—(*Vivādaratnākara*, p. 520.)

The property of a sonless appointed daughter goes to her husband.—(*Vivādachandra*, 23. 2-2.)

This refers to cases where the 'appointed daughter' has no brother born to her after her 'appointment.'—(*Parāsharamādhava*, p. 374.)

73. पैठीनसि] प्रेतायां पुत्रिकायां न भर्ता तद्द्रव्यमर्हत्यपुत्रायाम् ।
कुमार्या स्वस्रा वा [*v.l.* मात्रा वा श्वश्र्वा वा] तद् ग्राह्यम्
[*v.l.* अपुत्रायां कुमार्या च भ्रात्रा तद् ग्राह्यमित्यपि] ।

On the death of a sonless appointed daughter, her husband shall not inherit her property ; *it shall be inherited by her unmarried daughter or sister* [*v.l.*, (*a*) mother or mother-in-law ; (*b*) unmarried daughter and brother].—(*Paithīnasi.*) [Quoted in *Vivādaratnākara*, p. 521 ; *Aparārka*, p. 754 ; *Parāsharamādhava*, p. 374.]

NOTES

See p. 487.

The sister shall inherit the property only if the unmarried daughter is not there.—(*Vivādaratnākara*, p. 621.)

What is asserted here is that the property of the sonless appointed daughter goes to her daughter ; [(*b*) is the reading adopted here].—(*Parāsharamadhava*, p. 374.)

74. शङ्खलिखित] प्रेतायाः पुत्रिकाया न भर्ता धनमर्हत्यपुत्रायाः ।

If an appointed daughter dies sonless, her husband would not be entitled to inherit her property.—(*Shaṅkha-Likhita*). [Quoted in *Aparārka*, p. 754.]

NOTES

See p. 488.

This refers to cases where the daughter herself has been 'appointed' as the 'son,' with the formula 'This girl is my son.'—(*Aparārka*, p. 751.)

75. बौधायन] रिक्थं मृतायाः कन्यायाः गृह्णीयुः सोदराः समम्
नारद] [v. l. स्वयम्] ।
तदभावे भवेन्मातुस्तदभावे भवेत् पितुः ॥

The property of a dead maiden shall be inherited equally by her uterine brothers ; failing them, by her mother ; and failing her, by her father.—(*Baudhāyana and Nārada.*) [Quoted in *Aparārka*, p. 754 ; *Mitākṣarā*, p. 868 ; *Vivādaratnākara*, p. 521 ; *Vivādachintāmaṇi*, pp. 223-224 ; *Madanapārijāta*, p. 669 ; *Smṛtichandrikā*, p. 666 ; *Parāsharamādhava*, p. 374 ; *Dāyabhāga*, pp. 90-91 ; *Vīramitrodaya*, p. 703 ; *Smṛtitattva II*, p. 186 ; *Vyavahāramayūkha*, p. 162 ; *Vibhāgasāra*, 12. 1—4 ; *Dāyanirṇaya*, 10. 2—4.]

NOTES

Whatever property, in the shape of the head-ornament and the like, had been given to a maiden by her maternal grandfather and others, or had been inherited by her, shall be taken by her uterine brothers.—(*Mitākṣarā*, p. 865.)

The '*Kanyā*' meant here is the unmarried maiden.—(*Vivādaratnākara*, p. 522.)

This refers to a case where, prior to the verbal betrothal, some such things as a head-ornament and the like have been lovingly given to a girl by her maternal grandfather, father and other relations, as her very own.—(*Madanapārijāta*, p. 469.)

Any ornaments and such things that may have been given to a maiden by her maternal grandfather and others shall be taken by her uterine brothers.—(*Parāsharamādhava*, p. 374.)

Here we find a definite order of succession laid down—(*Smṛtitattva II*, p. 186.)

This refers to cases where the girl has died before marriage, and to such property as ornaments and the like which may have been given to her at the time of her betrothal, by her maternal grandfather and others ;—such is the view of traditionists.—(*Vyavahāramañykha*, p. 162.)

The first heir to the maiden's property is her brother, then her mother, then her father. This refers to cases where the maiden had been orally betrothed ; and it does not apply to the property that she may have received from the bridegroom ; which property reverts to the bridegroom himself.—(*Dāyanirṇaya*, 10. 2, 4-5.)

76. बृहस्पति] मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा ।
श्वश्रूः पूर्वजपत्नी च मातृतुल्याः प्रकीर्तिताः ॥
यद्यासामौरसो न स्यात् सुतो दौहित्र एव वा ।
तत्सुता वा धने तासां स्वस्रीयाद्याः समाप्नुयुः ॥

Mother's sister, wife of the maternal uncle, wife of the paternal uncle, father's sister, mother-in-law, elder brother's wife,—these have been declared to be equal to the mother.—If these have no *legitimate* child of the body, nor step-son, nor daughter's son, nor the son of these (of son's son and of step-son),—then their sister's son and the rest shall inherit their property.—(*Bṛhaspati*, 25. 88-89.) [Quoted in *Aparārka*, p. 754 ; *Vivādaratnākara*, p. 522 ; *Vivādachandra*, 23. 2–4 ; *Smṛtichandrikā*, p. 666 ; *Parāsharamādhava*, p. 374 ; *Dāyabhāga*, p. 96 ; *Vīramitrodaya*, p. 704 ; *Smṛtitattva II*, p. 187 ; *Vyavahāramayūkhā*, p. 161 ; *Dāyanirṇaya*, 12. 2—6.]

NOTES

'*Pūrvaja*' is the elder brother ; his wife is '*pūrvajapatnī*.'—(*Aparārka*, p. 754)

The meaning is that in the absence of the legitimate son and the rest, the property of the mother's sister goes to her sister's son and the rest —(*Vivādaratnākara*, p. 522.)

In the case of the mother's sister and the rest,—if these have left no legitimate son, or daughter's son or son's son, their property goes to the sister's son and rest.—(*Vivādachandra*, 23. 2–4.)

'*Svasrīyāḥ*'—the son of the proprietress' sister ; he inherits the property of his mother's sister (the proprietress). In the order in which they are mentioned, the property of these shall be taken by their corresponding relatives, to whom they are 'equal to the mother.' On the same principle the children of her co-wife shall take the property of their step-mother, if the latter has left no offspring or husband or other heirs.—(*Smṛtichandrika*, p. 666.)

The meaning is that in the case of women married in the *Brāhma* or other (superior) forms of marriage, in the absence of the husband,—and in that of those married in the *Āsura* on other (inferior) forms of marriage, in the absence of the parents,—the property of the mother's sister and the rest shall go respectively to her sister's son and the rest —(*Parāsharamādhava,* p. 374.)

The term '*aurasa*' here stands for both son and daughter; these two exclude all others.—The term '*suta*' stands for the *step-son.* The word '*Sutaḥ*' cannot be taken along with '*aurasaḥ,*' as in that case it would be entirely superfluous, and also because in that case the text would imply that the sister's son and others are entitled to inherit the woman's property even when her step-son is there In the absence of the legitimate son and daughter and of the step-son, the daughter's son inherits the property.—The term '*tatsutāḥ*' stands for the sons of the woman's own son and of her step-son; these latter are entitled to inherit, not the son of the daughter's son; because this latter is precluded from offering the cake.—Thus then, in the absence of the son and other heirs down to the brother and husband,—even though her father-in-law and other *Sapiṇḍas* be there,—the property goes to the sister's son and the rest.—The women being mentioned as 'equal to the mother,' it becomes implied that the heirs mentioned are *equal to the son,* so that these come to be indicated as liable to offer the cake also.—The persons entitled to inherit in respective order would be—the sister's son (inherits the property of his mother's sister), the husband's sister's son (the property of his maternal uncle's wife), the husband's brother's son (the property of this paternal uncle's wife), the brother's son (the property of his father's sister), the son-in-law (the property of the mother-in-law), and the husband's brother (the property of his elder brother's wife)——(*Dāyabhāga,* pp. 96-97.)

'*The sister's son and the rest*'—This phrase is meant only to indicate the title to inherit the property,—not to indicate the exact order of succession. The right order of succession is as follows:—(1) Husband's brother, (2) the son of the husband's brother and the son of the brother's father-in-law (?), (3) the sister's son, (4) the husband's sister's son, (5) the brother's son and (6) the son-in-law.—(*Dāyabhāga,* p. 98.)

The term '*aurasa*' stands for the son and daughter; and the term '*suta*' for the step-son; this latter cannot be taken with '*aurasa,*' as in that case it would be superfluous; and it would lead to the conclusion that the sister's son and the rest would inherit the property of the woman, even in the presence of her step-son, which would be contrary to everlasting usage.—The term '*tatsutāḥ*' refers to the sons of the legitimate son and the step-son, not to the sons of the daughter's sons, though this latter is its nearest antecedent, because these latter have been precluded from the offering of the cake.—(*Vīramitrodaya,* pp. 704-705.)

The term '*aurasa*' stands for both son and daughter;—and '*suta*' for the step-son; this latter cannot go with '*aurasaḥ,*' as in that case, it would be entirely superfluous; and also because in that case the conclusion would be that the sister's son and the rest would inherit the woman's property even when her step-son would be there. The term '*tatsutāḥ*' stands for her own son's son and her step-son's son, not to the daughter's son's son.—Thus then

the son's son or the step-son's son would be entitled to inherit only in the absence of all the foregoing, down to the daughter's son ; and so on.—(*Smṛti-tattva II*, p. 187.)

In the absence of the husband [in the case of women married in the *Brāhma* or other superior forms of marriage]—and in the absence of the parents [in the case of women married in the *Āsura* or other inferior forms of marriage]—the following are the heirs to the property technically called '*Strīdhana*.' 'The absence of the *daughter* and the *daughter's daughter*' should also be taken as implied here.—(*Vyavahāramayūkha*, pp. 161-162.)

The term '*aurasa*' stands for her own son and daughter ; and '*suta*' for the son of her co-wife ; '*tatsuta*' for the co-wife's grandson.—(*Dāyanirṇaya*, 12. 2–8.)

77. वृद्धशातातप] मातुलो भागिनेयस्य, स्वस्रीयो मातुलस्य च ।
श्वशुरस्य गुरोश्चैव सख्युर्मातामहस्य च ॥
एतेषां चैव भार्याभ्यः स्वसुर्मातुः पितुस्तथा ।
श्राद्धदानं तु कर्तव्यमिति वेदविदां स्थितिः ॥

The maternal uncle should offer *Shrāddha* to his sister's son ; the sister's son should offer it to his maternal uncle ; one should offer *Shrāddha* to one's father-in-law, teacher, friend and maternal grandfather,—to the wives of these, to the sister, mother and father.—(*Vṛddha-Shatātapa.*) [Quoted in *Dāyabhāga*, p. 98 ; *Smṛtitattva II*, p. 188 ; *Dāyanirṇaya*, 12. 2–9.]

NOTES

The law on the succession to *Strīdhana* is thus summed up in *Dāyanirṇaya* (12. 2—10) et seq.—The property of the unmarried girl goes to (1) her uterine brother, (2) mother, and (3) father. The property of the betrothed girl, other than what has been given to her by the bridegroom, goes to (1) the brother, (2) the mother, and (3) the father. What had been given by the bridegroom reverts to him. The *dowry* goes to (1) the maiden daughter, (2) the betrothed daughter, (3) the daughter with son, (4) the daughter expecting a son, (5) barren daughter, (6) widowed daughter, (7) son, (8) grandson, (9) great-grandson, (10) co-wife's grandson, (11) co-wife's great-grandson ; in the case of her having been married in the *Brāhma* form (12) husband, (13) brother, (14) mother, and (15) father ; [in the case of her having been married by the *Āsura* form], (12) mother, (13) father, (14) brother, and (15) husband), (16) the son of her husband's younger brother, (17) her sister's son, (18) husband's sister's son, (19) brother's son, (20) son-in-law, (21) father-in-law, (22) *Sapiṇḍas*, (23) *Sakulyas* and (24) *Samānodakas*.

78. याज्ञवल्क्य 2. 146.] दत्वा कन्यां हरन् दण्ड्यो व्ययं दद्याच्च सोदयम् ।
मृतायां सर्वमादद्यात् परिशोध्योभयव्ययम् ॥

Having given away a girl, if one takes her away, he should be punished and made to pay the expenses incurred, along with interest.—If the girl dies, he shall take back all, after having cleared the expenses incurred on both sides.—(*Yājñavalkya*, 2. 145.) [Quoted in *Vivādaratnākara*, p. 521; *Madanapārijāta*, p. 668.]

NOTES

Having received money from the bridegroom and having given away the maiden—if one takes her back, he should be punished by the king; and be made to pay the bridegroom the expenses incurred by him, with interest.—On her death, the husband should take back what he had given, after having cleared off the expenses incurred on both sides.—(*Vishvarūpa.*)

The author lays down certain rules in connection with verbally betrothed girls. Having given away the girl to a bridegroom devoid of all such defects as impotence and the like, if one takes her away from him, on finding a more suitable bridegroom,—he should be punished by the king;—he shall also pay with interest, to the bridegroom, all that the latter may have spent, *i.e.*, he should be made by the king to pay it,—If, before the marriage, the girl dies, the bridegroom shall take back all that he may have given to the bride's father for purposes of the marriage,—after having made good what may have been spent, in connection with the marriage, by the bride's father and by the bridegroom himself.—(*Aparārka*).

In connection with *Strīdhana*, the author states certain rules relating to the verbally betrothed girl.—Having verbally betrothed the girl, if the father takes her away, he should be punished by the king, in accordance with the amount of money spent, the nature of the defects and such other circumstauces. But this is to be done only in a case where the girl is taken away without sufficient reason; the father is not to be punished if he takes away the girl on account of a non-suitable bridegroom having turned up; for in such a case the taking away of the girl from the former bridegroom has been permitted.—Whatever expenses may have been incurred by the bridegroom for the reception of his own as well as the bride's relations,—all that, along with interest, shall be paid to the bridegroom by the giver of the girl.—The second half lays down what is to be done in the case of the bride dying before the marriage is actually performed. If the betrothed girl dies, then whatever, in the shape of the ring and other ornaments and the like, or the nuptial fee,—may have been given by the bridegroom, all that the bridegroom shall take back '*after having cleared the expenses incurred on both sides*';—*i.e.*, he shall 'clear off,' make good the expenses incurred by himself and by the giver of the girl,—and take the remainder. What may have been given to the girl, in the shape of the head-ornament and such things, by her maternal grandfather and other relations,—or inherited by her,—all that shall be taken by her uterine brothers,

as declared by Baudhāyana in the text—'*Riktham mṛtāyāḥ kanyāya,* etc.'—(*Mitākṣarā.*)

In connection with *Strīdhana,* the author lays down certain rules in regard to the property received by the girl's father, in connection with her marriage in the *Āsura* or other inferior forms of marriage. Having verbally betrothed the girl, if one takes away the girl,—*i.e.*, does not give her to the bridegroom,—he shall be punished by the king, in accordance with the nature of the property involved and other circumstances; and he, *i.e.*, the betrother, shall also pay with interest what may have been spent by the bridegroom in connection with the marriage.—If, by chance, the girl dies, the bridegroom shall make good what may have been spent by himself and by the girl's father and other relatives, and take for himself the clothes, ornaments and such other things that may have been given by himself; but he shall charge no interest.—The mention of the act of 'clearing' shows that if the property does not exceed what may be needed for the repaying or what has been spent by the girl's father, then, in that case the bridegroom shall not take the property.—The particle '*Cha*' indicates that the paying of the expenses and the infliction of the fine are done simultaneously.—(*Viramitrodaya Ṭīkā* on *Yājnāvalkya*).

Having given away the girl verbally,—if one takes her away, without any defect (in the bridegroom), he shall be punished by the king; and he shall be made to make good to the bridegroom any expenditure that he may have incurred, along with interest. There would however be nothing wrong in taking away the girl for sufficient reason; for instance, it has been laid down that 'one may take away a girl whom he has given if a more suitable bridegroom turns up.'—It by chance the betrothed girl should die, then the bridegroom shall clear off what may have been given by the girl's father for the entertainment of his marriage-relations, as also what these marriage relations may have given to the bride, in the shape of rings and other things—and then he shall take what remains.—(*Vivādaratnākara,* p. 521.)

Having verbally betrothed the girl, if her father takes her away, even when there is no defect in the bridegroom,—he shall be punished by the king in accordance with the caste, the property and other circumstances of the case; and he shall also pay to the bridegroom all that the latter and his father and other relations may have spent in connection with the betrothal, along with interest. In case the betrothed girl dies before marriage, whatever may have been given by himself, in the shape of rings and other things, as well as the nuptial fee,—all that the bridegroom shall take back,—'*after having cleared the expenses incurred on both sides.*' That is, out of the girl's property in the shape of the rings, etc., the bridegroom shall make good all that may have been spent by both parties over the betrothal and other ceremonies,—and take for himself what remains of it.—(*Madanapārjāta,* pp. 668-669.)

79. शङ्ख] न हार्यं स्त्रीधनं राज्ञा तथा बालधनानि च ।
नार्याः षडागमं वित्तं बालानां पैतृकं धनम् ॥

The property of women, in the shape of the six kinds of *Strīdhana*—and the property of minors in the shape of their

ancestral property,—shall not be escheated to the king.—(*Shaṅkha.*) [Quoted in *Vivādachintāmaṇi*, p. 244; *Vibhāgasāra*, 17. 1—5.]

NOTES

'*Ṣaḍāgamam*' - *i. e.*, the six kinds of *Strīdhana, Adhyagni* and the rest.—(*Vivādachintāmaṇi*, p. 244.)

'*Ṣaḍāgamam*—The six kinds of property which have been described under the technical name (of '*Strīdhana*'.)—(*Vibhāgasāra*, 17. 1-6.)

80. अर्थशास्त्र] मृते भर्तरि धर्मकामा तदानीमेवास्थाप्याभरणं शुल्कशेषं च लभेत। लब्ध्वा वा विन्दमाना सवृद्धिकमुभयं दद्यात् ॥ कुटुम्बकामा तु श्वशुरपतिदत्तं निवेशकाले लभेत। श्वशुरप्रातिलोम्येन वा निविष्टा श्वशुरपतिदत्तं जीयेत। ज्ञातिहस्तादभिमृष्टाया ज्ञातयो यथागृहीतं दद्युः ॥

On the death of her husband, the widow, having immediately set aside her ornaments, shall obtain the remainder of her nuptial fee. After having obtained this, if she takes to another husband, she should be made to give up the property along with interest. If she be desirous of having a family (and therefore has recourse to her brother-in-law), she shall get what her husband and father-in-law may have given her, at the time of marriage. If she takes to another husband in opposition to the wishes of her father-in-law, she shall be deprived of what she had obtained from the father-in-law.—(*Arthashāstra II*, p. 14.)

81. अर्थशास्त्र] पुत्रवती विन्दमाना जीयेत। तत्तु स्त्रीधनं पुत्रा हरेयुः। पुत्रभरणार्थं वा विन्दमाना स्फातीकुर्यात्। कामकरणीयमपि स्त्रीधनं विन्दमाना पुत्रस्थं कुर्यात्।

If a widow with sons marries, she should be deprived of her property; and that *Strīdhana* should be taken by her husband. If she marries for the purpose of supporting her sons, she should augment her *Strīdhana* for the sake of her sons. On remarrying she shall hand over to her sons even that *Strīdhana* with which she is entitled to do what she likes.—(*Arthashāstra II*, p. 15.)

82. अर्थशास्त्र] पतिदायं विन्दमाना जीयेत । धर्मकामा तु भुञ्जीत ।

The widow, remarrying, shall be deprived of what she may have inherited from her former husband. But she shall enjoy it if she is desirous of fulfilling her religious obligations.—(*Arthashāstra II*, p. 15.)

83. अर्थशास्त्र] आसुरादिविवाहे शुल्कमन्वाधेयमन्यद्वा बन्धुभिर्दत्तं बान्धवा हरेयुः ।

If the woman has been married under the *Āsura* or other inferior forms of marriage, and dies sonless, her relations shall take her nuptial fee, the gifts received by her after marriage and whatever else she may have received from her relations.—(*Arthashāstra II*, p. 16.)

84. अर्थशास्त्र] बहुपुरुषप्रजानां पुत्राणां यथा पितृदत्तं स्त्रीधनमवस्थापयेत् ।

If a woman who has had several husbands leaves several sons, her *Stridhana* shall be divided among the sons on the principle that each shall receive that part of it which may have been given to the woman by his own father.—(*Arthashāstra II*, p. 16.)

85. अर्थशास्त्र] न्यायोपगतायाः प्रतिपत्ता स्त्रीधनं गोपायेत् ।

If a widow has remarried according to law, her husband shall guard (not enjoy) her *Strīdhana*.—(*Arthashāstra II*, p. 15.)

CHAPTER V

MISCELLANEOUS REGULATIONS FOR DETERMINING DOUBTFUL POINTS ARISING IN CONNECTION WITH PARTITIONS

1. मनु] विभागे यत्र सन्देहो दायादानाम्परस्परम् ।
पुनर्विभागः कर्तव्यः पृथक्स्थानस्थितैरपि ॥

If a dispute arises among the coparceners themselves regarding the partition, the partition should be done over again, even though the coparceners may be in different places.—(*Manu* ?) [Quoted in *Smṛtichandrikā*, p. 720; *Parāsharamādhava*, p. 338; *Vīramitrodaya*, p. 717; *Vyavahāramayūkha*, p. 136.]

NOTES

This refers to cases where the doubt cannot be removed by any of the methods prescribed.—(*Smṛtichandrikā*, p. 720.)

This re-division is to be made in the manner laid down for division among reunited coparceners.—(*Vīramitrodaya*, p. 717.)

The meaning is that where the doubt cannot be removed by any of the methods described, the property has to be divided over again.—(*Parāsharamādhava*, p. 388.)

Manu has prescribed re-partition in cases where none of the methods described can definitely determine the question as to whether the parties are divided or undivided.—(*Saṁskāramayūkha*, p. 135)

2. याज्ञवल्क्य 2. 150.] विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः
[*v.l.* विभागस्य तु सन्देहे ज्ञातिसाक्ष्यभिलेखितैः]
विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः ॥
[*v.l.* विभागभावनादेयगृहक्षेत्रकयौतकैः]

If there is denial of partition, it has to be proved through agnates, cognates, witnesses and documents; as also through the fact of separate houses and fields (belonging to the parties) [or *v.l.*, through separate acceptance of gifts, and separate houses and fields] —(*Yājñavalkya*, 2. 150.) [Quoted in *Smṛtichandrikā*, p. 177; *Vivādaratnākara*, p. 607; *Vivādachintāmaṇi*, p. 253; *Parāsharamādhava*, p. 385; *Dāyabhāga*, p. 229;

Vīramitrodaya, p. 715 ; *Madanapārijāta*, p. 689 ; *Vyavahāramayūkha*, p. 132 ; *Vibhāgasāra*, 19. 2—10.]

'*Yautakaiḥ*,' separated.—'*Vibhāga*' stands for the *character* of the partition also.—(*Smṛtichandrikā*, p. 717.)

NOTES

'*Yautakaiḥ*,' separate ; the word being derived from the root '*yu*,' which denotes 'not-mingling.'—(*Vivādaratnākara*, p, 607.)

This text explains what should be done if someone denies the partition, saying 'I am not divided.'—If a partition is denied, it should be proved of 'kinsmen' and the rest.—'*Jñāti*' stands for the maternal uncle and other relatives, '*bandhu*,' for the son of the paternal uncle and others;—those relatives are mostly such as are themselves included in the partition and are near at hand;—or other '*witnesses*,' or the '*document*' that might have been executed, setting forth the details of the partition. Says Bṛhaspati—'When brothers are divided, they should execute a document proclaiming the division, and they should also have unimpeachable witnesses to the transaction with a view to guard against misunderstandings.'—Also '*Ādeya*'—'*Gṛha*,' —'*Kṣetra*' and '*Yautaka*' [*v.l.*, for *Jñeyā gṛhakṣetraiḥ yautakaiḥ*]—*Ādeya*, is receiving of gifts (by each on his own account) ; '*Gṛha-Kṣetra-Yautaka*,' separate houses, separate lands and separate marriage-portions.—(*Vishvarūpa*.)

When there is a dispute as to whether or not a division has taken place, the method of proving it is as follows :—'*When there is a denial of the partition*'—one of the coparceners saying 'there has been no partition between us,'—'*the proof of the partition is to be established*' *by means of* '*Jñāti*' and others ; as also by the existence of '*Yautaka*,' *i.e.*, separate houses, lands, etc.—'Houses and lands' stand for all those evidences of separation that have been described in other Smṛtis,—such as *Nārada* (13. 38—41)—'Giving, receiving, cattle, food, houses, lands, and servants should be regarded as separate among divided brothers ; and so should cooking, religious acts, income and expenditure The acts of giving evidence, of becoming a surety, of giving and of taking may be performed among themselves by divided brothers, not by undivided ones.'—If brothers or others should transact such business as these publicly with their coparceners they may be presumed to be separate in business, even though no document be in existence.'—(*Aparārka*.)

This text describes the manner in which doubts regarding Partition shall be set aside.—When there is '*nihnava*,' denial of partition, the fact of the partition may be ascertained through *Jñātis* [explained by the *Bālambhaṭṭī* as *neutrals belonging to the same caste as the party concerned*,—*Pitṛbandhus* (paternal relatives), *Mātṛbandhus* (maternal relatives), the maternal uncle and the like,—through witnesses of the kind prescribed in the preceding texts,—and *document*, *i.e.*, the deed of partition ; as also through houses and fields being *separate* ['*Yautaka*' means *separate*, being derived; from the root '*yu*' which denotes both *mixed* as well as *unmixed*—says the *Bālambhaṭṭi*.]—Nārada (13. 37, 39) has described separate agricultural

operations, separate performance of the five great sacrifices and other religious acts and others as indicative of partition.—(*Mitākṣarā.*)

When a co-parcener denies the partition, saying 'there has been no partition between us,'—the '*Vibhāvanā*,' fact of the '*Vibhāga*,' partition, is to be ascertained by the Judge and others,—through '*Jñātis*,' paternal kinsmen—'*bandhus*,' other relatives,—witnesses, such as have been previously described, who would bear testimony to the fact of the partition,—'documents,' deeds of partition—'houses and fields,' which are '*Yautaka*,' *i.e.*, belonging to each coparcerner as exclusively as their marriage-portions.—(*Vīramitrodaya-Ṭīka*, on *Yājnavalkya*)

'*Yautakaiḥ*,' separate; being derived from the root '*yu*' which denotes 'not-mingling.' The meaning is that if the houses and fields are found to be separate, the partition shall be regarded as established. That is to say, the presence of separate houses and fields proves the partition, as it cannot be accounted for otherwise.—(*Vivādachintāmaṇi*, p. 253.)

'*Jñāti*,' father's relatives;—'*Bandhus*,' mother's relatives;—'*lekhya*,' the deed of partition;—by these the proof of partition should be regarded as established;—also by 'separated houses and fields.'—(*Parāsharamādhava*, p. 386.)

The most important witnesses are the '*Jñatis*,' *i e.*, the *Sapiṇdas*; in the absence of these, 'other relatives,' who are spoken of by means of the word '*bandhu*'; in the absence of these also, ordinary impartial witnesses. If all the three had been intended to be of equal importance, then the single term 'witness' would have been sufficient, and there would be no sense in mentioning the '*Jñāti*' and the '*Bandhu*.'—(*Dāyabhāga*, p. 229.)

When there is denial of partition,—made by anyone of the divided coparceners.—'*Jñātibhiḥ*,' by the father's relatives;—'*bandhabhiḥ*' by the mother's relatives, the maternal uncle and the like,—by impartial 'witnesses,' who fulfil the conditions laid down for witnesses;—even though the *Jñāti* and the *Bandhu* also are means of ascertaining the partition, only in the capacity of 'witnesses,' yet as compared with strangers, those relatives would be more intimate with the parties and as such more likely to know the separate performance of *Shrāddha* and such other circumstances as may be indicative of partition,—'*Lekhyena*,' by the deed of partition.—By all these means the fact of partition may be ascertained;—also '*yautakaiḥ gṛhakṣetraiḥ*, by separate houses and fields; the word '*yautaka*' being derived from the root '*yu*' which denotes 'non-mingling.'—(*Vīramitrodaya*, p. 715.)

If, after the lapse of some time, someone denies the partition, saying that there has been no partition, the ascertainment of the partition can be got at through *Jñātis*, paternal relatives, maternal relatives, maternal uncle and the rest,—'witnesses,' such as have been described before, and 'document,' *i.e.*, the deed of partition; as also through separated houses and fields. That is to say, it is to be ascertained by the fact of the parties carrying on their agricultural and other operations separately, and also performing their five Great Sacrifices and other acts separately.—(*Madanaparinjāta*, p. 689.)

Here Yājñavalkya describes the means of proving the partition in the event of someone denying it.—'*Yautakaiḥ*' means *separate*, qualifying '*Gṛhakṣetraiḥ*,'—'houses and fields.'—(*Vyavahāramayūka*, p. 182.)

3. नारद 13. 36.] विभागधर्मसन्देहे दायादानां विनिर्णयः ।
ज्ञातिभिर्भागलेख्येन पृथक्कर्मप्रवर्तनात् ॥

When the legality of a partition is in doubt the decision of the dispute among coparceners shall be founded on the testimony of kinsmen, the deed of partition and the separate transaction of business.—(*Nārada*, 13. 36) [Quoted in *Vyavahāramayūkha*, p. 132.]

4. मनु 9. 47.] सकृदंशो निपतति सकृत्कन्या प्रदीयते ।
सकृदाह ददानीति त्रीण्येतानि सकृत्सकृत् ॥

Once does the share fall to a man ; once is a maiden given away ; once does one say "I give" ; each of these three comes only once.—(*Manu*, 9. 47.) [Quoted in *Smṛtichandrikā*, p. 720 ; *Parāsharamādhava*, p. 388 ; *Vīramitrodaya*, p. 717 ;] *Dāyabhāga*, p. 221 ; *Smṛtitattva*, *II*. p. 182 ; *Vivādachandra*, 23. 2—7.]

NOTES

At the time of partition, if the coparceners are such as are entitled to equal or unequal shares, they should divide the property in such equal or unequal shares. This partition having been once made, someone of the coparceners may subsequently raise objections to it. It is such subsequent objection that the present text is meant to preclude. If, however, at the very outset, the party were to indicate the inadequacy of his share, then the partition should have to be revised. If, on the other hand, the objection should declare the iniquity of the partition after the lapse of a long time, all that he can claim is the equalisation of his own share, and not a rescission of the whole partition ; since during the time that has elapsed since partition, each coparcener will have made additions to his share, or carried out repairs to what may have been in a dilapidated condition, or used up the gold and other things, so that a repartition of the entire estate would not be possible.—Others, however, explain this declaration to mean that—'if, after the partition, it be discovered subsequently that there are some among the coparceners who are affected by impotence or some such defect as disqualifies him from receiving a share in the property—there shall be no resumption of these shares by the others.'—Similarly, if there be some coparceners who are entitled to two, three or four shares,—but somehow, at the time of partition, all of them receive equal shares, then, if after some time, they were to complain, they should not be permitted to annul the former partition.— In the case of the outcast, however, his share shall be resumed by the other coparceners.—(*Medhātithi.*)

The share of a divided coparcener is determined once ; what has been assigned to him once shall remain so.—(*Sarvajñanārāyaṇa.*)

The partition of patrimony by the brothers is made according to law, only once ; it is not annulled.—(*Kullūka.*)

Among brothers partition is made only once, not over and over again.—(*Rāghavānanda.*)

'*Sakṛt*'—*only once* ;—'*Aṁshaḥ,*'—share in the divided property.—(*Rāmachandra.*)

This (finality) refers to cases where all doubts regarding it have been set at rest by the prescribed methods.—(*Smṛtichandrikā*, p. 720.)

This can refer to only those cases where the fact of the partition can be definitely ascertained by the prescribed methods.—(*Parāsharamādhava*, p. 388.)

This applies to only those cases where there is not sufficient ground for rescission.—(*Vīramitrodaya*, p. 717.)

This refers only to such partition as has been rightly done—(*Dāyabhāga*) p. 221 ; *Smṛtitattva* II, p. 182.)

5. बृहस्पति 25. 22—26.] कृतेऽकृते विभागे वा रिक्थी यत्र प्रदृश्यते ।
सामान्यं चेद् भावयति तस्य भागहरस्तु सः ॥
ऋणं क्षेत्रं गृहं लेख्यं यस्य पैतामहं भवेत् ।
चिरकालप्रोषितोऽपि भागभागागतस्तु सः ॥
गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः ।
तद्वंशस्या [*v.l.*, अर्धतस्त्वा] गतस्यांशः प्रदातव्यो न संशयः ॥
तृतीयः पञ्चमश्चैव सप्तमो वाऽपि यो भवेत् ।
जन्मनामपरिज्ञाने लभेतांशं क्रमागतम् ॥
यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः ।
तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही ॥

Whether partition has or has not been made,—whenever an heir comes forward, he shall receive a share of such wealth as he can prove to be the joint property—whether it be a debt, or a field, or a house, or a document.—Which has come down from the paternal grandfather,—one shall take one's proper share of it, when one returns even from a protracted absence.—When a man has gone abroad, leaving the joint estate of his family, his share must undoubtedly be given to his descendant when he comes back ;—whether he be the third or the fifth or even the seventh in descent, he shall receive the share belonging to him by right of succession,—on his birth and family-name being ascertained.—He, whom natives of the place and neighbours know to be the owner,—to the descendant of that man must the land be surrendered by his kinsmen, whenever he comes forward.—(*Bṛhaspati*, 25. 22–26). [Quoted in

Vivādaratnākara, pp. 540-541; *Smṛtichandrikā*, pp. 712-713; *Dāyabhāga*, pp. 132-133; *Vivādachandra*, 20. 2—5; *Smṛti-tattva II*, p. 180; *Vibhāgasāra*.]

NOTES

See under II, 58 and 281; p. 167, 343.

'*Bhāvayati*'—proves that he also is entitled to a share in the property.—There is no inconsistency between this and Dēvala's text (below) —'*Avibhakta-vibhaktānām*, etc.,' because the latter refers to cases where the persons concerned have been living together, while the present text refers to cases where the person concerned has been away in foreign lands or living in inaccessible places.—(*Vivādaratnākara*, pp. 540-541.)

'*Gotrasādhāraṇam tyaktvā*,'—in a case where a man has relinquished his co-residence in the family-house and also the country itself and has gone to live in a far off country,—and during his absence his kinsmen, not knowing of his existence, have divided all the property among themselves;—if this man subsequently returns home, his share should be given to him—'*Ardhataḥ*' (*v.l.*, for '*tadvamshasya*')—*i.e.*, out of the half of the property divided.—In this case the ignorance of the existence of the man being due to his own remissness, no other alternative has been mentioned; that is why the text has added the phrase '*na samshayaḥ*,' 'undoubtedly.'—Similarly, in a case where a man has been away for a long time and the property has been partitioned during his absence by his kinsmen not knowing of his existence,—when he returns, he should receive his share.—'*Bhāgabhāk*,' is entitled to half;—'*Āgataḥ*,' *i.e.*, after the property has been divided.—'*Tṛtīyaḥ, etc.*'—If the person returning after partition is a grandson or a still lower descendant of the original owner, he is entitled to a share in the ancestral property only.—'*Yam paramparayā, etc.*'—In some cases the person returning after partition would receive a share in the ancestral *landed* property only.—'*Kṛtē akṛtē, etc.*'—for a case where the man has turned up after partition,—or even before partition,—and proceeds to take his share in the property, he is entitled to receive it only if he establishes his claim by means of evidence, temporal as well as super-physical, not otherwise.—(*Smṛtichandrikā*, pp. 712-713.)

The meaning is that if a member of the family has returned after a long residence abroad, he shall receive his share in the property if he is recognised by the natives of the place and others living in the neighbourhood.—(*Dāyabhāga*, p. 133.)

These texts are not authoritative.—(*Vyavahāramayūkha*, p. 134.)

'*Tṛtīyaḥ pañchamaḥ, etc.*'—This refers to one who has gone abroad to foreign lands.—(*Vibhāgasāra*, 5 1—6.)

6. देवल] अविभक्तविभक्तानां कुल्यानां वसतां सह ।
भूयो दायविभागः स्यादाचतुर्थादिति स्थितिः ॥

Among kinsmen—divided or undivided—living together, there can be re-partition up to the fourth degree; such is the

settled rule.—(*Devala.*) [Quoted in *Aparārka*, p. 727 ; *Vivādaratnākara*, pp. 482, 541 ; *Vivādachandra*, 20. 2–5 ; *Parāsharamādhava*, p. 338 ; *Vīramitrodaya*, p. 573 ; *Smṛtitattva*, II, p. 190 ; *Vyavahāramayūkha*, p. 101.]

NOTES

See p. 338.

Among undivided kinsmen living together,—or among kinsmen divided but reunited,—there can be redistribution of property,—only among brothers, their sons and their grandsons ; it shall cease with the sons of these grandsons, who would constitute the fourth degree of descent.—(*Vivādaratnākara*, p. 482.)

There shall be no partition after the fourth degree. But this refers only to cases where the claimants are living together ; it does not preclude the allotment of shares to those who have returned from foreign lands, in whose case sharing shall be done even after the fourth degree ; as declared by Bṛhaspati (25. 22–26.) (above).—(*Vivādachandra*, 20. 2-5).

Shares can be allotted to the direct heir, or (in his absence) to the heir's son, or (in his absence) to the heir's grandson, or (in his absence) to the heir's great-grandson ; but no further ; *i.e.*, one is not entitled to receive a share in the property of his great-great-grandfather.—(*Parāsharamādhava*, p. 438.)

The meaning is that there can be partition of the property left by the original owner only among his descendants up to the fourth degree. This same rule applies to the case of those who have become divided and again reunited.—(*Vīramitrodaya*, p. 573.)

In a case where among several brothers one is not living, his share shall be given to his son ; if this son also is not living, then the share of the brother shall be given to his grandson ; after that the share lapses. That is, among undivided co-sharers living together,—or reunited after separation,—there shall be readjustment of shares only in regard to the brother, his son, and his grandson ;—in accordance with this the wife also of the great-grandson only shall be entitled to receive a share.—(*Smṛtitattva II*, p. 190.)

When a man dies after his son, grandson and great-grandson have all died,—his property shall be inherited by his great-great-grandson ; it goes no further. But this refers to those who have become reunited after separation, not to those who have not separated at all.—(*Vyavahāramayūkha*, p. 101.)

7. कात्यायन] अविभक्ते मृते पुत्रे [v.l. (*a*) तुजे प्रेते (*b*) निजे प्रेते]
तत्सुतं रिक्थभागिनम् ।
कुर्वीत जीवनं येन लब्धं नैव पितामहात् ॥
लभेतांशं च पित्र्यं तु पितृव्यात् तस्य वा सुतात् ।
स पूर्वांशस्तु सर्वेषां भ्रातॄणां न्यायतो भवेत् ॥
लभेत तत्सुतो वाऽपि निवृत्तिः परतो भवेत् ॥

If a son has died before partition, they shall give his inheritance to his son, who may not have got an inheritance

from his grandfather; he shall receive his paternal share from his uncle or uncle's son; this same would be the equitable share of all his brothers. The son of that son also shall receive the said share; after that, it shall lapse.—(*Kātyāyana.*)- [Quoted in *Aparārka*, p. 727; *Vivādaratnākara*, p. 482; *Vivādachintāmaṇi*, p. 203; *Vivādachandra*, p. 20. 1—3; *Smṛtichandrikā*, p. 647; *Parāsharamādhava*, p. 337; *Vīramitrodaya*, pp. 573, 643; *Smṛtitattva II*, pp. 167, 190; *Vyavahāramayūkha*, p. 101; *Dāyanirṇaya*, 21. 2.—9.]

NOTES

If a brother has died before the property has been divided, his son,—who has not received any share in the property from his grandfather,—shall receive his father's share, from his uncle or uncle's son. So also the son of that son; after whom it will lapse.—(*Aparārka*, p. 727.)

What is meant is that if among the brothers, one does not exist, his share does not cease to go to his son.—(*Vivādaratnākara*, p. 482.)

In a case where the father, A dies, first, then the grandfather, B—the property of B is to be divided among his sons and his grandsons and great-grandsons (*i.e.*, the sons and grandsons of A),—these latter receiving the share that would have been their father's.—(*Dāyanirṇaya*, 21. 2.—8.)

'*Nijē*' (*v.l.*, for '*putrē*'), a brother;—'*tatsutam*,' the son of the brother;—'*Jīvanam*,' share.—What is the share that he shall receive is mentioned in the next line—'*his father's share*';—'*tatsutaḥ*,' *i.e.*, the grandson of the person whose property is being divided. What is meant is that the property left by a householder shall be divided into as many parts as there are sons; and the share of a son shall be received by the sons or grandsons of that son; not by his great-grandson; this is what is meant by its '*lapsing*.'—This refers to cases where they are all living together.—Thus the wife of the dead (son), being mentioned here, would not be entitled to his share.—(*Vivādachintāmaṇi*, pp. 302-304.)

If a son has died before the partition of the property, then the father (of the dead son) should allot the share of the dead son to the son of this latter,—if he has not received a living from his grandfather. If his father's father has died without allotting a share to him, then he shall receive his paternal share from his undivided uncle or uncle's son; similarly the uterine brothers of the said son.—It might be argued that "on the analogy of this rule, the said son shall receive his father's share in the latter's mother's property also"; but this could not be so, as the text contains the qualification '*avibhaktē*,' 'before partition'; which implies that the inheriting shall be of the property of that person only with whom partition would be possible; and no partition is possible between the mother and her son.—In case the dead son has left no son, but grandsons, these latter are to receive shares in accordance with the share of their respective fathers—(*Vivādachandra*, 20. 1—3.)

'*Jivanam*,' inheritance;—'*anuja*' (*v.l.*, for '*putra*') stands for the dead brother.—In the same case, if the dead brother has several sons, the same share shall go to all of them.—'*Labheta tatsuto vāpi, etc.*'—The meaning is that the son of the grandson of the original owner of the property to be divided shall receive his father's share in the absence of the father. If this son of the grandson also is not living, then, the next in descent among the descendants of the dead brother will not receive any share in the property of his great-great-grandfather.—*Objection.*—"As a matter of fact, the great-grandson also cannot inherit the property of his great-grandfather; as the rule is that only sons and grandsons shall inherit the property of the father and grandfather."—*Reply.*—True; but just as in the case of the mother's property the ownership of the son is established on the mother's death, after his offering the funeral cake, by the mere act of *being alive*,—in the same manner the ownership of the great-grandson over the great-grandfather's property also would be established. Thus it follows that whoever offers the funeral cake to a dead person, either as 'father' or 'grandfather,' also inherits his property.—(*Smṛtichandrikā*, pp. 647-648.)

In a case where between the two sons of a man, one brother has died before partition—the son of that brother is there, but he received no property from his grandfather,—and the grandfather has also died, then the allotment shall be made as laid down in this text.—'*Labheta tatsuta vā*';—the meaning of this is that the son of the grandson of the original owner of the partible property shall receive his father's share, where the father is not living; and after that among his further descendants, the inheriting of the great-great-grandfather's property ceases. -(*Parāsharamādhava*, pp. 337-338.)

'*Nija*,' brother;—'*Tatsutam*,' the brother's son;—'*Jīvanam*,' share;—this share being the '*father's share.*'—'*Tatsutaḥ*,' the great-grandson of the person whose property is being partitioned.—There is '*lapse*,' '*parataḥ*,' after that; *i.e.*, the son of the great-grandson does not receive a share.—(*Vīramitrodaya*, p. 575.)—Here Kātyāyana has distinctly declared the inheriting rights of the son, grandson and great-grandson.—(*Ibid.*, p. 643.)

Kātyāyana here lays down the order of inheritance among the son, grandson and the rest.—'*Jīvanam*,' provision for maintenance.—If among brothers, one has died, then his son should be given his father's share. In a case where the dead brother has more than one son, their father's share shall be divided among them.—Similarly the son of this son also shall receive the share; the son of this last son shall not receive anything.—This refers to cases where they are living together.—(*Smṛtitattva, II* p. 190.)

The term '*anuja*' includes the elder brother also.—'*Parataḥ*,' after the great-grandson.—On the death of the father, grandfather and great-grandfather, the son of the great-grandson does not receive a share in the property of the latter,—if the son and other descendants are living; but if the son, grandson and great-grandson—all these are absent, then the great-grandson's son shall receive the property.—This refers to cases where the members concerned have become reunited after partition,—not where there has been no partition at all.—(*Vyavahāramayūkha*, p. 101.)

8. कात्यायन] भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम् ।
विभागकाले देयं तत् रिक्थिभिः सर्वमेव तु ॥
तद्दत्तं धनिने देयं नान्यथैव प्रदापयेत् ।
भावितं चेत्प्रमाणेन विरोधात् परतो यदा ॥

Whatever debts may have been incurred for household purposes, by the brother, the uncle and the mother, should all be paid off at the time of partition, by those who inherit the property. That debt shall be paid to the creditor, not to any other person. In case there has been a suit, the debt shall be paid only when proved by evidence.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 722; *Vyavahāramayūkha*, p. 122.]

NOTES

See p. 38.
'*Virodhātparataḥ*'—after the filing of the suit.—(*Aparārka.*)

9. कात्यायन] पित्र्यं पित्रर्णसम्बद्ध [*v.l.*, संशुद्ध] मात्मीयं चात्मना कृतम् ।
ऋणमेवंविधं [*v.l.*, कृतं] शोध्यं विभागे बन्धुभिः सह [*v.l.*, सदा] ॥

See p. 45.

Father's debt, debt connected with the father's debt, debt incurred (by others) for the benefit of one's own people, debt incurred by oneself,—these kinds of debts should be cleared at the time of partition with one's kinsmen.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 723; *Parāsharamādhava*, p. 376; *Vyavahāramayūkha*, p. 122.]

NOTES

'*Debt connected with the father's debt*'—*i.e.*, what has been incurred for the clearing off of the father's debt.—'*Ātmīyam*,' the debt incurred by another person for the maintenance of one's family.—(*Vyavahāramayūkha*, p. 122.)

10. नारद 13. 42-43.] यद्येकजाता बहवः पृथग्धर्माः पृथक्क्रियाः ।
पृथक्कर्मगुणोपेता न चेत् कार्येषु सम्मताः ॥
स्वभागान् यदि दद्युस्ते विक्रीणीयुरथापि वा ।
कुर्युर्यथेष्टं तत्सर्वमीशास्ते स्वधनस्य वै ॥

If there are several descendants of one man, who are separate in the matter of the performance of religious acts, in

business-transactions and in the implements of work,—and who are not carrying on any business—dealings jointly,—in case they would give away or sell off their own respective shares, they should be free to do all this; as they are masters of their own property.—(*Nārada*, 13. 42-43.) [Quoted in *Aparārka*, p. 757; *Madanapārijāta*, pp. 689, 690; *Parāsharamādhava*, p. 384; *Vyavahāramayūkha*, p. 136; *Vivādachintāmaṇi*, p. 255; *Vivādaratnākara*, pp. 608-609; *Smṛtichandrikā*, pp. 715-716; *Dāyabhāga*, p. 35; *Vīramitrodaya*, pp. 587, 713-714; *Smṛti-tattva II*, p. 177; *Vibhāgasāra*, 20. 1—6.]

NOTES

No significance is meant to be attached to the qualification '*being descendants of one man,*' or to the plural number in '*several.*'—'*Pṛthagdharmāḥ,*' performing their respective Five 'Great Sacrifices' and other acts separately.—'*Pṛthakkriyāḥ,*' carrying on moneylending and other kinds of business separately.—'*Pṛthakkarmaguṇopetāḥ,*' having separate arrangements for the care of children, for agricultural operations and for other kinds of business.—'*Na chēt, etc.,*' if they are operating jointly.—'*Sarvam,*' 'all,' has to be taken in a restricted sense; the restrictions being those detailed in the section dealing with the 'Resumption of Gifts,' and such texts as '*Vibhaktā vāvibhaktā vā, etc.*'—(*Vivādaratnākara*, pp. 608-609.)

The meaning of this is as follows.—If the descendants of one man are many, separated in several ways,—*e.g.*, (*a*) performing the Agnihotra and other religious acts requiring the expenditure of wealth, separately, without the consent of one another; (*b*) carrying on agricultural and other worldly business by means of their separated wealth; (*c*) possessing separate utensils and other implements of work; and (*d*) the brothers are not in agreement in regard to business-dealings, and each does his work regardless of the others;—if such separated persons '*would give away or sell off their shares, they should be free to do all this*'; because being separated, they are all independent masters of their own.—(*Smṛtichandrikā*, pp. 715-716.)

Here sale and other transactions have been sanctioned in a general way. The statement of the reason, '*as they are masters of their own property*' implies that this refers to immovable property also; as otherwise this statement would be meaningless.—(*Vīramitrodaya*, p. 587).

The meaning of this is as follows:—If there are several brothers born of the same person,—'divided'—this being applied as understood, according to some people, but in our opinion the fact of their being 'divided' is already signified by the qualifications added, '*separate in the matter, etc., etc.*'; otherwise there would be no point in adding these.—'*Pṛthagdharmāḥ*' those whose '*dharma*' in the shape of the offering of worship to *Dēvas* and *Pitṛs* is separate; it does not stand for the *Agnihotra* and such acts; because these latter are performed separately even by brothers who are not divided.—'*Pṛthakkriyāḥ,*'—this refers to ordinary worldly acts.—'*Pṛthakkarmaguṇopetāḥ,*' those who have separate

implements (*guṇas*) of such acts (*karma*) as pounding and the like,—*i.e.*, such implements as pestle, mortar, stone slabs, and so forth. '*Na chēt kāryēṣu, etc.*;' do not act with one another's consent.—If they wish to give away or sell,—or pledge or mortgage—their shares, they can do it, as they wish. If separated brothers give their consent to the gift, the business proceeds smoothly; but even though they do not give their consent, that does not vitiate the gift.—The reason for this is that '*they are masters of their own property.*' That is mutual consent is necessary only in regard to joint property, not regarding what belongs solely to any one individual only.—(*Vīramitrodaya*, pp. 713-714.)

The meaning of this is as follows:—(*a*) If the brothers are so circumstanced that without each other's consent they carry on religious performances involving the expenditure of wealth;—(*b*) they carry on agriculture and other operations involving the separate expenditure of wealth;—(*c*) they make separate profits and losses;—and (*d*) in regard to social and village matters, they are opposed to each other,—then they should be regarded as 'separate.'—(*Aparārka*, p. 757.)

The meaning is as follows:—Several brothers, born of one father, when separated—(*a*) can perform such works of public utility as cost money, even without each other's consent;—(*b*) may carry on such business as agriculture and the like which will require capital;—(*c*) may possess separate pestles, mortars and other household implements; (*d*) similarly, if the brothers are not in agreement with one another, they might ignore each other in the carrying on of their business; and (*e*) separated brothers may or may not give away or sell their own shares, just as they please; because, being separated, they are masters of their own property.'—(*Parāsharamādhava*, p. 384.)

'*Dharma*,' the Five Great Sacrifices and the like.—'*Kriyā*,' trading and other secular business.—'*Karmaguṇah*,' working implements, household utensils, etc.—When these are separate, it indicates that the brothers are separated. The meaning is that the brothers, thus separated, can give or sell their property, without each other's consent.—(*Vyavahāramayūkha*, p. 136.)

11. कात्यायन] शङ्काविश्वाससन्धाने विभागे रिक्थिनां सदा ।
क्रियासमूहकर्तृत्वे कोशमेव प्रदापयेत् ॥

In regard to the division of coparceners, if there are doubts and it is desired to establish confidence,—in regard to the persons who have made the division,—recourse should be had to the *Kosha-ordeal*.—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 636; *Parāsharamādhava*, p. 376.]

NOTES

This text serves the purpose of restricting the ordeal to the one particular form of the *Kosha-ordeal*.—(*Smṛtichandrikā*, p. 636, and *Parāsharamādhava*, p. 376.)

12. कात्यायन] बन्धुनाऽपहृतं द्रव्यं बलान्नैव प्रदापयेत् ।
बन्धूनामविभक्तानां भोगं नैव निवर्तयेत् [v.l. प्रदापयेत्] ॥

If wealth has been taken away by a kinsman he should not be forced to surrender it ; among undivided kinsmen, possession should not be set aside.—(*Kātyāyana.*) [Quoted in *Vivādachandra*, 23. 2–7 ; *Vīramitrodaya*, p. 707 ; *Smṛtitattva*, *II*, p. 183 ; *Vivādaratnākara*, p. 526.]

NOTES

The meaning of the second line is that if any one of the coparceners is enjoying more of the joint property than is his due, he should not be forced to surrender it.—(*Vivādachandra*, 23. 2–7.)

The meaning is that such cases should not be reported to the king ; even if they are reported, the king shall make him give up the property only by conciliatory means, not by force ; and the visible result of this is that one does not lose the affection of the party concerned. The meaning of the second line is that at the time of the subsequent partition also the complaint should not be made that he has enjoyed more than was his due, nor shall the king confiscate what has been so enjoyed. What is meant is that in a joint family it is impossible to prevent the various members enjoying more or less.—But this does not absolve the delinquent from the expiatory rite necessitated, or the penalty incurred, by his improper conduct.—(*Vīramitrodaya*, p. 707.)

The term '*Apahṛta*' is used in its secondary sense (not in its ordinary sense of *stolen*.) The meaning is that he should be made to give it back, by conciliatory means, not by force ; and if an undivided coparcener has enjoyed more than was his due, he should not be made to surrender it.—(*Smṛtitattva*, *II*, p. 183.)

'*Balānnaiva pradāpayēt*,'—what is meant is that it should be recovered from him by means of tricks and such other means.—'*Bhogam naiva pradāpayēt* [*v.l.*, for '*nivartayēt*'],—at the time of partition he should not be made to surrender what he has been enjoying—by the complaint that he has been enjoying more than was his due.—(*Vivādaratnākara*, p. 526.)

13. कात्यायन] (A) विभक्तेनैव यत् प्राप्तं धनं तस्यैव तद् भवेत् ।
नारद] (B) हृतं नष्टं च यल्लब्धं प्रागुक्तं च पुनर्भजेत् ॥

(A) What has been acquired by a divided coparcener belongs to him alone ; (B) what had been wrongly taken (by a coparcener), and what had been lost and has been recovered,—shall be partitioned again, as before.—(*Kātyāyana* and *Nārada*) [Quoted in *Smṛtichandrikā*, p. 715 ; *Vyavahāramayūkha*, p. 132 ; *Vivādaratnākara*, p. 526 ; *Aparārka*, p. 733.]

NOTES

(A) If a coparcener who has become separated from others acquires some property, that property belongs to the acquirer, not to his coparcener;—(B) What had been wrongly taken away by a coparcener, or what had been lost and has been recovered,—all this shall be divided equally among all.—(*Smṛtichandrikā*, p. 715.)

'*Prāguktam*'—*i.e.*, property that had been concealed by a coparcener.—(*Vyavahāramayūkha*, p. 132.)

'*Hṛtam*'—taken by someone else.—'*Naṣṭañcha yallabdham*,' such property as had not been noticed at the time of partition and is subsequently discovered.—'*Prāguktam*,' *i.e.*, ancestral (property).—(*Vivādaratnākara*, p. 526.)

'*Prāguktam*,' taken away.—(*Aparārka*, p. 733.)

14. कात्यायन] प्रच्छादितं तु यद् द्रव्यं [*v.l.*, यदि धनं] पुनरासाद्य [*v.l.*, गस्य] तत् समम् ।
भजेरन् भ्रातृभिः सार्धमभावेऽपि हि तत्सुताः [*v.l.*, हि पितुः सुताः] ॥

If a certain article has been concealed (by a coparcener), and it is found out afterwards, they shall divide it equally among the brothers; in the absence of these (brothers), among their sons.—(*Kātyāyana*.) [Quoted in *Aparārka*, p. 732; *Vivādaratnākara*, p. 526; *Smṛtichandrikā*, p. 714; *Smṛtitattva II*, p. 181; *Vivādachintāmaṇi*, p. 205; *Dāyabhāga*, p. 221; *Vibhāgasāra*, 5. 1-2.]

NOTES

In a case where at the time of partition someone has concealed an article deceitfully creating the impression that it belonged to a stranger,—if on investigation it is afterwards found that it really forms part of the joint property,—then it should be divided equally. If by the time the original coparceners have died, it shall be divided among their sons.—(*Smṛtichandrikā*, p. 714.)

'*Prachhāditam*'—concealed at the time of partition.—(*Vibhāgasāra*, 5. 1—4.)

15. कात्यायन] अन्योन्यापहृतं द्रव्यं तु [*v.l.*, नि] विभक्तं च यद् भवेत् ।
पश्चात्प्राप्तं विभज्येत समभागेन तद् भृगुः ॥
बन्धूनामविभक्तानां भागं नैव प्रदापयेत् ।

If an article had been taken by anyone among themselves, and if anything had been wrongly divided,—on being found

out, it should be divided in equal parts ;—so says Bhṛgu.—Among undivided relatives, no one shall be required to make good what he has enjoyed.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 733 ; *Vivādaratnākara*, p. 526 ; *Vivādachintāmaṇi*, p. 224 ; *Vivādachandra*, 23. 2—5 ; *Smṛtichandrikā*, p. 714 ; *Parāsharamādhava*, p. 383 ; *Vibhāgasāra*, 5 1—3 ; 12. 1—8.]

NOTES

See. Ch. I, Sec. 15

'*Samabhāgena*'—*i.e.*, in shares equal to the previous shares.—(*Vivādachintāmaṇi*, p. 224.)

'*Pashchātprāptam*.'—That which had been stolen or lost at the time of partition and which has been recovered after the partition.—(*Vivādachandra*, 23. 2—5.)

'*Durvibhaktam*,' wrongly divided ; *i.e.*, divided in unequal shares, in a manner contrary to law.—(*Smṛtichandrikā*, p. 714.)

What has been divided unequally, in a manner contrary to law, should be equalised.—Inasmuch as this text lays down the redivision of only what had been deceitfully kept back, it follows that there is no redivision of what has been already divided.—(*Parāsharamādhava*, p. 383.)

'*Anyonyāpahṛtam*'—taken by each man according to his own wish ;—'*Durvibhaktam*,' inequitably divided.—(*Vibhāgasāra*, 5. 1—4).—The coparcener who has been enjoying the property shall not be required to make good what he has enjoyed. That such is the sense is clear from the term '*in equal parts*.'—(*Vibhāgasāra*, 12. 1—9.)

16. याज्ञवल्क्य 2. 126.] अन्योन्यापहृतं द्रव्यं विभक्तेयत्तु [*v.l.*, विभक्तैर्यत्र] दृश्यते ।
तत् पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः ॥

If after partition it is discovered that some article had been surreptitiously taken by one of themselves, that article they shall divide again equally ; such is the settled rule.—(*Yājñavalkya*, 2. 126.) [Quoted in *Vivādaratnākara*, p. 525 ; *Vivādachintāmaṇi*, p. 224 ; *Madanapārijāta*, p. 688 ; *Smṛtichandrikā*, p. 714 ; *Parāsharamādhava*, p. 382 ; *Dāyabhāga*, p. 221 ; *Vīramitrodaya*, p. 706 ; *Vyavahāramayūkha*, p. 131 ; *Vibhāgasāra*, 12. 1—5.]

NOTES

This rule applies to those cases also where the coparceners are entitled to unequal shares (as laid down in Yājñavalkya, 2. 125.)—The word '*sthitiḥ*' implies that there should be no doubt regarding the propriety of equal division.—(*Vishvarūpa*.)

This lays down what is to be done in a case where a brother has wrongfully taken away something that should be divided, and it is subsequently discovered.—If a partible property has been taken away by a brother, and it is discovered after the partition has taken place,—that property shall be divided among all the coparceners in equal shares,—not in unequal shares; there being no preferential share in this case.—The assertion of this rule being sufficient justification for the text, it does not go to prove that the man who takes away the property does *not* incur sin. . . . . A possible view is that the property thus discovered is to be divided equally only among all the coparceners *except the one who had concealed it*.—(*Aparārka.*)

In a case where a joint property had been surreptitiously taken by one of the coparceners themselves, which is found out, not at the time of partition of the ancestral property, but after it,—this property they shall divide among themselves in equal shares; such is the rule of the law.—The mention of '*equal shares*' precludes all preferential shares.—'*Vibhajeran,*' 'they shall divide;'- this implies that it shall not be taken only by the man who discovers it.—This being the fruitful significance of the text, it cannot be taken to imply that he who had taken the property incurred no sin. . . . Specially because by law as well as by equity, the taking away of what is common property does constitute an offence.—(*Mitākṣarā.*)

What is meant is that in a case where, after the partition has taken place, if some part of the joint property remains with any one of the coparceners, it does not become the exclusive property of that coparcener; there is to be another division of that property.—'*Equal,*' *i.e.*, in the same proportion as in the previous partition.—(*Vīramitrodaya-Ṭīkā,* on *Yājñavalkya.*)

The mere partition of the property in question being already got at by the general rule (that all common property is to be divided, and the property in question had not been divided), the purpose for which the present text has been set up is to indicate that in the case in question the man that had taken the property does not commit the offence of 'stealing';—such is the view of *Halāyudha.*—(*Vivādaratnākara,* p. 526 and *Vivādachintāmaṇi,* p. 224.)

If, after the partition, it is discovered that some property had been taken away by one of the coparceners,—that property they shall divide *in equal shares,*—and not according to the scheme whereby the eldest gets a preferential share in the shape of the twentieth part of the property.—(*Madanapārijāta,* p. 688.)

'*They,*' the divided co-sharers.—The meaning is that, if among persons living together someone has taken away some property and it is discovered after partition,—it has to be equally divided.—(*Smṛtichandrikā,* p. 714.)

If someone has deceived others at the time of partition, and the deceit is discovered afterwards,—the whole should be divided equally;—the word '*sarva*' serves to preclude all unequal division; and the plural number in '*Vibhajeran*' indicates that the property is not to be taken only by the man who has discovered the property.—(*Parāsharamādhava,* p. 382.)

The term '*sarva*' precludes partition with a preferential share.—The term '*Vibhajeran*' indicates (*a*) that the property discovered is not to be taken only by the man who discovered it, and (*b*) that the man who had retained the property is not to receive a smaller share.—(*Vīramitrodaya,* p. 706.)

This lays down the partition of what has been surreptitiously kept back by the brothers and others.—'*Anyonyāpahṛtam,*' by the eldest, or the youngest or others.—(*Vyavahāramayūkha*, p. 131.)

In fact the division of the property in question being necessary by reason of its not being already divided, the purpose served by its reiteration in the text is to indicate that the party concerned is not to be regarded as a thief; such is the opinion of Halayudha. In our opinion, however, the text serves the purpose of actually laying down the partition, in view of the fact that it is well known that in such cases the property comes to be looked upon as belonging exclusively to the person in whose possession it is found, and it may not be regarded as joint property; hence it is necessary to lay down that the property is to be divided.—(*Vibhāgasāra*, 12 1—6.)

17. नारद् 13. 5.] बिभृयाद्वेच्छतः सर्वान् ज्येष्ठो भ्राता यथा पिता ।
भ्राता शक्तः कनिष्ठो वा शक्त्यपेक्षा कुले स्थितिः ॥

The eldest brother, or the youngest brother, shall support all (the brothers) like a father, if they so wish it,—in accordance with his capacity; the well-being of the family is dependent upon the capacity (of its head).—(*Nārada*, 13. 5.] [Quoted in *Aparārka*, p. 722; *Vivādaratnākara*, p. 458; *Vivādachintāmaṇi*, p. 195; *Smṛtichandrikā*, p. 615; *Dāyabhāga*, p. 62; *Vīramitrodaya*, p 556; *Smṛtitattva II*, p. 170.]

NOTES

Manu (9. 105) having laid down that if they are all agreed, the entire property shall be taken by the eldest brother, who will support all the others,—the present text says that any one of the brothers (not necessarily the eldest) who has the capacity may do this.—(*Vivādachintāmaṇi*, p. 195.)

This refers to cases where all the younger brothers are unable to manage their business.—(*Smṛtichandrikā*, p. 615.)

The youngest brother, if able, may support the others. The middlemost brother also becomes naturally included.—This means that the brothers may live together (and not divide), if all of them so wish it.—(*Dāyabhāga*, p. 62.)

The middlemost brother becomes included according to the maxim 'of the stick and cake.'—(*Smṛtitattva II*, p. 170.)

18. बृहस्पति 25. 14.] समवेतैस्तु यत् प्राप्तं सर्वे तत्र समांशिनः ।
तत्पुत्राविषमसमाः पितृ [*v.l.*सम] भागहराः स्मृताः ॥

What has been acquired conjointly,—in that all are equal sharers; their sons, equal or unequal in number, are

declared to be entitled to the shares of their respective fathers.—(*Bṛhaspati*, 25. 14.) [Quoted in *Aparārka*, p. 727; *Vivādaratnākara*, pp. 481-482.]

NOTES

See Chap. I, 53, and Chap. II, 260; p 36, 331.

In a case where the brothers have died without dividing their property,—and one of them has left only one son, while others have left two or three,—these two or three sons shall receive only what would have been the share of their father; and the entire property is not to be divided equally among the cousins individually.—(*Aparārka*, p. 727.)

'*Sons equal or unequal in number*'—whose fathers had not divided the property.—(*Vivādaratnākara*, p. 482.)

19. व्यास] साधारणं समाश्रित्य यत् किञ्चिद् वाहनादिकम्
[*v.l.*, युधम्] ।
धनं शौर्यादिनाऽवाप्तं भ्रातरस्तत्र भागिनः ॥
तस्य भागद्वयं दत्त्वा [*v.l.*, कार्यं] शेषास्तु समभागिनः ॥

If any property, such as conveyance and the like, has been acquired by a man by his own bravery or such special efforts,—with the help of the joint property,—his brothers shall receive shares in that property; the acquirer having taken two shares, the rest shall be divided equally among the others.—(*Vyāsa.*) [Quoted in *Vivādachintāmaṇi*, pp. 201; 214; *Vivādachandra*, 20. 2-3; *Aparārka*, p. 725; *Madanapārijāta*, p. 688; *Vivādaratnākara*, p. 508; *Smṛtichandrikā*, p. 640; *Parāsharamādhava*, p. 379; *Dāyabhāga*, pp. 107, 111; *Smṛtitattva II*, p. 176; *Vyavahāramayūkha*, p. 127.]

NOTES

See p. 34, 331.

Even when the property has been acquired by the special efforts of an individual,—such as bravery and the like,—if it has been acquired with the help of the joint property,—the acquirer shall be entitled to two shares.—(*Vivādachintāmaṇi*, p. 201).—'*Bravery and the like*,'—the term 'the like' includes *Learning*.—It has been declared elsewhere that property acquired by Learning or Bravery,—even though it be done with the help of the joint property,—is not to be shared by the coparceners;—but that refers to 'Learning' and 'Bravery' in the technical sense assigned to them by Kātyāyana and other writers. The present text on the other hand refers to 'Bravery' and 'Learning' of kinds other than those implied in the technical sense.—(*Ibid*, pp. 214-215.)

If a coparcener by his own efforts, but with the help of the joint property, acquires some property, he shall take two shares out of it for himself and divide the rest equally among the other coparceners.—(*Vivadāchandra*, 20. 2—3).

This refers to property acquired with the help of the paternal property.—(*Aparārka*, p. 725.)

'*Sādhāraṇam*'—Joint property.—(*Madanapārijāta*, p. 688.)

This should be understood to pertain to property acquired by learning, bravery, etc., as distinct from the property that has been technically described as 'acquired by learning, bravery, etc.'—(*Vivādaratnākara*, p. 508.)

'*Sādhāraṇam*'—property belonging to undivided coparceners.—The term '*brothers*' stands for *undivided coparceners*.—'*Tasya*,' *i.e.*, of what has been acquired with the help of the joint property.—The use of the term '*bravery and such efforts*' indicates the partibility of such property as is obtained at marriage for instance which is performed with the help of the joint property.—(*Smṛtichandrikā*, p. 640.)

Just as in the case of property acquired by learning, with the help of the ancestral property, so also in that of what is acquired by bravery, the acquirer receives two shares.—(*Parāsharamādhava*, p. 379.)

This lays down the divisibility of what has been acquired with the help of the joint property.—(*Dāyabhāga*, p. 107).—This lays down two shares for the acquirer in the case of property acquired by drawing upon the joint property.—(*Ibid.*, p. 111.)

The mention of '*brothers*' is only by way of illustration; the uncle and others also should be taken as meant.—(*Smṛtitattva II*, p. 176.)

20. बृहस्पति] साधारणर्णन्यासनिह्नवे छद्मना क्रियाम् ।
पार्श्वहानिकरीं कृत्वा बलान्नैव प्रदापयेत् ॥

If a coparcener conceals a debt or pledge,—or deceitfully does something that damages his own rights,—he should be made to surrender it, but not by force (only by conciliatory modes.)—(*Bṛhaspati*.) [Quoted in *Vivādaratnākara*, pp. 526-527.]

NOTES

If a man conceals a debt or pledge—which belongs to all jointly—or deceitfully does something damaging the interests of the concealer,—the man who had misappropriated the concealed property should be made to surrender it, but not by force.—(*Vivādaratnākara*, p. 527.)

21. मनु] विभागे तु कृते किञ्चित् सामान्यं यत्र दृश्यते ।
नासौ विभागो विज्ञेयः कर्तव्यः पुनरेव हि ॥

If some common property is discovered after the partition has been done,—that partition shall not be regarded as (valid).

partition; it should have to be done again.—(*Manu* ?). [Quoted in *Smṛtichandrikā*, p. 715; *Parāsharamādhava*, p. 383; *Vyavahāramayūkha*, p. 132.]

NOTES

This must be taken as applying to cases where the property in question is discovered before the divided coparceners have added to, or spent out of, what had been assigned to them at the previous partition.—The purpose served by re-partition is that preferential shares are given out of the newly-discovered property also.—(*Smṛtichandrikā*, p. 715.)

This must refer to cases where the new property has been discovered before the coparceners have added to, or spent out of, the property assigned to them at the previous partition; otherwise there would be no sense in the statement contained in the text '*Amyonyāpahṛtam dravyam*, etc.,'—(Sec. 15 above).—(*Parāsharamādhava*, p. 383.)

22.] विभानन्तरं प्राप्तं धनं तस्यैव तद्भवेत् ।

If a property is discovered after the partition has been done, it shall belong to the person who discovered it. (?) [Quoted in *Vivādachandra*, 23. 2–6.]

23. स्मृति] एकोऽपि स्थावरे कुर्याद् दानाधमनविक्रयम् ।
आपत्काले कुटुम्बार्थे धर्मार्थे च विशेषतः ॥

A single coparcener also may give away, or mortgage or sell, immoveable property, at times of distress, for purposes of the family; specially for the purpose of religious acts.—(*Smṛti.*) [Quoted in *Parāsharamādhava*, p. 332; *Vīramitrodaya*, p. 585; *Dāyanirṇaya*, 15. 2—5.]

NOTES

See p. 122.

In times of distress every coparcener has got the right to do anything with the property.—(*Parāsharamādhava*, p. 332.)

'*Religious acts*'—The acts specially meant here are such as the performance of the *Shrāddha* of the father and the like.—If a distress has overtaken the whole family any individual member would be entitled to give away or mortgage or sell immovable property,—the maintaining of the family being absolutely essential.—(*Vīramitrodaya*, p. 585.)

This is an exception to II. 6.

24. नारदीयपुराण] दत्तौरसेतरेषां च पुत्रत्वेन परिग्रहः ।
आदित्यपुराण] देवरेण सुतोत्पत्तिः वानप्रस्थाश्रमग्रहः ॥
कलौ युगे त्विमान् धर्मान् वर्ज्यानाहुर्मनीषिणः ॥

The taking of sons other than the *Adopted* and the *Body-born*, the begetting of sons (by the widow) through the brother-in-law, the recourse to the life of the *Hermit*,—these *Dharmas* the wise ones have declared to be such as should be avoided during the *Kali* age.—(*Shaunaka Nāradīya Purāṇa, Aditya-purāṇa.*) [Quoted in *Aparārka*, p. 739; *Smṛtichandrikā*, p. 669; *Parāsharamādhava*, p. 352.]

25. वसिष्ठ] येन तेषां यत् स्वयमुपार्जितं (*v.l.*, मुत्पादितं) स तद्द्व्यंशमाहरेत् ।

Among these (brothers), if anyone acquires property by himself he shall take two shares out of that property (*Vashiṣtha.*) [Quoted in *Mitākṣarā*, p. 642; *Vivādachintāmaṇi*, pp. 202, 214.]

NOTES

If among the brothers living together anyone has acquired property by his own efforts, but by drawing upon the paternal property, that property is to be divided among all the brothers; but the person who has acquired the property shall receive two shares.—(*Mitākṣarā*, p. 652.)

Where a member of the joint family has earned something with the help of the joint property he shall receive two shares out of what he has earned.—(*Vivādachintāmaṇi*, p. 202).—Where from among several brothers, anyone earns something by agriculture or other operations, with the help of the common property,—he will receive two shares out of what he has earned and the others shall receive one share each.—(*Ibid.*, p. 214.)

26. कात्यायन] अप्राप्तव्यवहाराणां धनं व्ययविवर्जितम् ।
न्यसेयुर्बन्धुमित्रेषु प्रोषितानां तथैव च ॥

The property of minors, less the incidental expenses, they shall deposit with their relations and friends; so also the property of those gone abroad.—(*Kātyāyana.*) [Quoted in *Dāyabhāga*, p. 62; *Vīramitrodaya*, p. 587; *Smṛtitattva II*, p. 171. *Dāyanirṇaya*, 20. 2–5.]

NOTES

'*Aprāptavyavahāra*' are boys who have not reached the age of maturity.—(*Smṛtitattva II*, p. 171.)

27. विष्णु] रक्ष्यं बालधनमाव्यवहारप्राप्तेः ।

The property of the minor has to be protected till attainment of majority.—[Quoted in *Dāyabhāga*, p. 63; *Vīramitrodaya*, p. 587.]

28. अर्थशास्त्र II, p. 34.] दुर्विभक्तमन्योन्यापहृतमन्तर्हितमविज्ञातोत्पन्नं वा पुनर्विभजेयुः ।

They shall have a repartition of what has been wrongly divided, what had been surreptitiously taken by anyone among themselves, what had been concealed, and what has turned up unknown.—(*Arthashāstra II*, p. 34.)

29. अर्थशास्त्र II, p. 34.] एतावानर्थः सामान्यः—तस्यैतावानंशः प्रत्यंशः इत्यनुभाष्य ब्रुवन् साक्षिषु विभागं कारयेत् ।

One shall have the partition done in the presence of witnesses, saying clearly—"So much is joint property—of which so much shall form the share of each (co-sharer)."—(*Arthashāstra II*, p. 34.)

30. अर्थशास्त्र II, p. 31.] अपितृद्रव्या विभक्तपितृद्रव्या वा पुनर्विभजेरन्, यतश्चोत्तिष्ठेत् स द्व्यंशं लभेत ।

Those who have no ancestral property, or those who have already divided the ancestral property, shall divide again (any additional property that may accrue); and he who has acquired the additional property shall receive two shares.—(*Arthashāstra II*, p. 31.)

31. अर्थशास्त्र II, p. 32.] अपितृका बहवोऽपि भ्रातरो भ्रातृपुत्राश्च पितुरेकमंशं हरेयुः ।

Fatherless brothers,—even though many,—as also the brothers' sons—shall receive only the father's one share.—(*Arthashāstra II*, p. 32.)

32. अर्थशास्त्र II, p. 34.] ऋणरिक्थयोः समो विभागः ।

There shall be equal division of assets and liabilities.—(*Arthashāstra II*, p. 34.)

33. देवल] एक एव सवर्णः स्याद्दायोऽत्र न विभज्यते ।

If there is a single son of the same caste as the father then the property is not partitioned.—(*Dēvala.*) [Quoted in *Aparārka*, p. 727 ; *Smṛtichandrikā*, p. 614.]

34. अर्थशास्त्र II, p. 33.] पितुरसत्यर्थे ज्येष्ठाः कनिष्ठाननुगृह्णीयुः—अन्यत्र मिथ्यावृत्तेभ्यः ।

If there is no property left by the father, the elder shall treat the youngers kindly,—except those of wrong behaviour.—(*Arthashāstra II*, p. 33.)

35. नारद] अन्यायेनापि यद् भुक्तं पित्रा पूर्वतनैस्त्रिभिः ।
न तच्छक्यमपाकर्तुं क्रमात् त्रिपुरुषागतम् ॥

What has been even wrongly possessed by one's father and three ancestors cannot be taken away from him, it having come to him through three generations.—(*Nārada.*) [Quoted in *Smṛtitattva II*, p. 180.]

NOTES

'*Three ancestors*'—including the father; so that the man in possession at the time of dispute would be the fourth generation in possession. [In the present context the import of the text is that if a coparcener or his descendants have been away for a long time, and then they come to claim their share in the patrimony, they cannot get anything out of the property if it has been in the possession of the men in possession for three generations.]—(*Smṛtitattva II*, p. 180.)

36. बृहस्पति] अविभक्ता विभक्ता वा दायादाः [*v.l.*, सपिण्डाः] स्थावरे समाः ।
एको ह्यनीशः सर्वत्र दानाधमनविक्रये ॥

Divided or undivided, all coparceners have the same status in regard to immoveable property ; and no single individual has the power to give away or mortgage or sell it.—(*Bṛhaspati.*) [Quoted in *Aparārka*, p. 757; *Madanapārijāta*, p. 690; *Parāsharamādhava*, p. 384; *Vīramitrodaya*, p. 714 ; *Vyavahāramayūkha*, p. 136; *Smṛtichandrikā*, p. 716; *Mitākṣarā*, p. 612.]

NOTES

The coparceners may have partitioned their property, or may not have done it; in either case they have the same status in regard to their immovable property; among them, no single individual has the power to give it away, etc., etc.—(*Aparārka*, p. 757.)

'*Ādhamanam*' is *mortgaging*. What is asserted here is with a view to the smooth transaction of their business, and it does not mean that they are *not* separate; because the separation would be already accomplished by the partition.—(*Madanpārijāta*, p. 690.)

So long as the property has not been divided it is 'joint,' and no single coparcener is the master of it; consequently for any transaction regarding it, the consent of all must be obtained. Even after the partition the consent of all should be obtained, because this would be the easiest way of setting aside all doubts regarding the partition having been effected. It is for this purpose that, in the latter case, the consent of all would be required, and not because 'no single individual has the power.' Hence in reality even without the consent of the others, the transaction (of giving, selling and mortgaging) does become complete.—(*Parāsharamādhava*, p. 384.)

The consent of the divided coparceners has been mentioned here as essential only for the purpose of helping the transaction; just in the same way as the consent of the whole village has been held to be essential in the case of transfers of land.—The fact of the matter is that in the case of transactions relating to immovable property, after the lapse of a long time, when the witnesses have disappeared, it becomes very difficult to determine whether or not the property had been partitioned; therefore if in the very beginning the consent of all the coparceners has been obtained the said transaction remains undisturbed, irrespectively of any question regarding partition. Such is the view of Vijñāneshwara and many others.—The author of the *Smṛtichandrikā*, however, has offered the following explanation:—This text of Bṛhaspati refers to those cases where the coparceners find that an exactly equal division of the immovable property would be different and hence, at the time of partition, they decide among themselves that they would divide only the usufruct of that property (which is allowed to remain joint) and become 'divided' only by partitioning the other properties.—But this view is not correct; as such property being not partitioned, the consent regarding it would be necessary on that ground itself.—(*Vīramitrodaya*, p. 714.)

According to Madana, what the text means is that no single coparcener has the right to give away (mortgage or sell), without the consent of the coparceners, the produce of those lands which may not have been partitioned,—though other properties may have been divided. [This is the same as the explanation given by the *Smṛtichandrikā*.]—But Vijñāneshwara and others hold that the consent is necessary for the dispelling of doubts as to whether or not partition has been effected and thus confirming the transaction of gift, etc.—(*Vyavahāramayūkha*, p. 136.)

'*Ādhamanam*,' mortgaging. This refers to those cases where the coparceners find that an equal division of the immovable property would be difficult, and hence, at the time of partition, they decide among themselves that they would

divide only the usufruct of that property, and they become 'divided' only by partitioning the other properties;—it is only in such cases that no individual coparcener would be regarded as the 'owner' of the said immovable property —(*Smṛtichandrikā*, p. 136.)

In regard to such properties as have not been partitioned, they remain 'joint,' and no single individual is the 'owner' of it; consequently the consent of all is absolutely essential;—but in regard to the properties that have been partitioned the consent of all the coparceners would be required only for the purpose of smoothing the transaction of gift, sale or mortgage, by dispelling all doubt as to whether or not there had been partition;—and the consent would not be required on the ground that no single individual has the power to do it. As a matter of fact, regarding the partitioned properties, even without the consent of the coparceners, the transaction (of gift, sale or mortgage) would be perfectly valid.—(*Mītākṣarā*, p. 612.)

INDICATIONS OF 'JOINT' BROTHERHOOD.

37. धर्मप्रवृत्तौ वचांसि] अविभक्ताः सुताः पित्रोरेकं कुर्युर्मृताहिकम् ।
देशान्तरे पृथक् कुर्युर्दर्शश्राद्धानुमासिकम् ॥
ग्रामान्तरं व्रजेयुश्चेदविभक्ताः सदैव हि ।
दर्शं च मासिकं श्राद्धं कुर्युः पित्रोः पृथक् पृथक् ॥
अविभक्ताः पृथग्ग्रामाः स्वस्वार्जितधनाशिनः ।
कुर्युस्ते भ्रातरः श्राद्धं पार्वणं च पृथक् पृथक् ॥
स्मृतिसमुच्चये] वैश्वदेवः क्षयाहश्च महालयविधिस्तथा ।
देशान्तरे पृथक् कार्यो दर्शश्राद्धं तथैव च ॥

Undivided brothers shall perform only one *Shrāddha* in connection with the day of the death of their parents. If they are living in different countries, each of them has to perform it separately; as also the *Darsha-shrāddha*, etc., etc.—[Quoted in *Vyavahāramayūkha*, p. 134, which says that these texts are *not authoritative*.]

38. शाकल] एकपाकेन वसतामेकं देवार्चनं गृहे ।
वैश्वदेवं तथैवैकं विभक्तानां गृहे गृहे ॥

In the house of those living under one household kitchen, there is only one worship of the Household Deity; and only one Vaishvadeva offering. For those separated, it is to be separate in each house.—(*Shākala.*) [Quoted in *Vyavahāra-mayūkha*, p. 133.]

NOTES

This is an evidence of partition.

39. आश्वलायन] एकपाकेन वसतां विभक्तानामपि प्रभुः ।
एकस्तु चतुरो यज्ञान् कुर्याद् वाग्यज्ञपूर्वकान् ॥
अविभक्ता विभक्ताश्च पृथक्पाका द्विजातयः ।
कुर्युः पृथक् पृथक् यज्ञान् भोजनान् प्राक् दिने दिने ॥

When separated coparceners live under the same kitchen, only one of them shall perform the *Brahmajña* followed by the Four Sacrifices. Separated or not separated, if the twice-born have separate kitchens they should separately perform the Daily Sacrifices before taking their food. – (*Ashvalāyana*.) [Quoted in *Vyavahāramayūkha*, p. 133.]

NOTES

This refers to *re-united* coparceners. Even on being reunited, if they had separate kitchens, they would have to perform the five Great Sacrifices separately.—'*Vagyajña*' is *Brahmayajña*; according to this text, the *Brahmayajña* will have to be done separately.—These texts, however, are not regarded by the cultured people to be authoritative.—(*Vyavahāramayūkha*.)

40. बृहस्पति] एकपाकेन वसतां पितृदेवद्विजार्चनम् ।
एकं भवेद् विभक्तानां तदेव स्याद् गृहे गृहे ॥

For those living under one kitchen, there shall be only one offering to Pitṛs, Deities and Brāhmaṇas; for those that are separated, it shall be done in each house separately.—(*Bṛhaspati*)—[Quoted in *Smṛtichandrikā*, p. 718; *Vīramitrodaya*, p. 714.]

NOTES

Separate offerings to Vishvadeva and others being not possible for joint coparceners, if there are separate offerings, it proves that the members are separate; if ever a question arises as to whether they were united or separate, this fact would finally settle it. Other indicatives of separation having been effected have been described by Bṛhaspati in another text—(See below. Sec. 48)—(*Vīra*. p. 714.)

41. शङ्ख] गोत्रभागविभागार्थे [*v.l.*, गेऽर्थे] सन्देहे समुपस्थिते ।
गोत्रजैश्चापरिज्ञाते कुल्यं साक्षित्वमर्हति ॥

Whenever any doubt arises regarding the partition of what can be partitioned by agnates,—and the matter is not known to the agnates,—the cognates shall be witnesses.—(*Shaṅkha*.) [Quoted in *Dāyabhāga*, p. 229; *Vīramitrodaya*, p. 716; *Smṛtitattva II*, p. 179.]

NOTES

'*Gotrajaḥ*,' *i.e.*, by the *jñātis*, agnates.—If the matter is not known to these, then the '*kula*,' *i.e.*, cognates, shall be witnesses; and not persons who are not related to the parties. It is for this reason that Nārada has mentioned the *agnates* as the principal witnesses. Or the dispute may be decided by documentary evidence, which has been declared to be stronger evidence than witnesses.—(*Dāyabhāga*, pp. 229-230.)

'*Kulam*,' *i.e.*, *Bāndhavas*, cognates, the maternal uncle and others. It is for this reason that Nārada has mentioned the *agnates* as the most important witnesses.—(*Vīramitrodaya*, p. 716.)

'*Gotrabhāgavigārthē sandēhē?*'—(*a*) whenever there is a doubt regarding the partibility or impartibility of property acquired by agnates; (*b*) when there is a doubt regarding the validity of a partition that has been made,—and (*c*) when there is a doubt regarding the feasibility of the partition.—'*Kulam*, cognates.—It is only in the absence of these that others can be witnesses.—(*Smṛtitattva II*, p. 179.)

42. नारद13.38-40.]दान-ग्रहण-पश्वन्नगृहक्षेत्रपरिग्रहाः [*v.l.*,प्रतिग्रहा:] ।
विभक्तानां पृथक्ज्ञेयाः पाक [*v.l.*, दान] धर्मागमव्ययाः ॥
साक्षित्वं प्रातिभाव्यं च दानं ग्रहणमेव च ।
विभक्ता भ्रातरः कुर्युर्नाविभक्ताः परस्परम् ॥
येषामेताः क्रिया लोके प्रवर्तन्ते हि रिक्थिनाम्
[*v.l.*, स्वरिक्थेषु] ।
विभक्तानवगच्छेयुर्लेख्यमप्यन्तरेण तान् ॥

(A) *Giving and receiving* [or giving and taking of loans], cattle, food, houses, fields and *servants* (or acceptance of mortgages)—as also *cooking*, *religious acts* [or rites performed with cooked food], income and expenditure,—must be regarded as separate among divided brothers.

(B) The acts of giving evidence, of becoming a surety, and of accepting gifts may be done among themselves by divided brothers, not by undivided ones.

(C) Those Coparceners among whom these transactions are carried on should be regarded as *divided*, even in the absence of a written document.—(*Nārada*, 13. 38—40.) [Quoted in *Smṛtichandrikā*, p. 718; *Aparārka*, p. 756; *Mitākṣarā*, p. 872; *Madanapārijāta*, p. 689; *Vivādaratnākara*, p. 606; *Vivādachintāmaṇi*, p. 253; *Parāsharamādhava*, p. 386; *Dāyabhāga*, p. 230; *Vīramitrodaya*, p. 716; *Smṛtitattva II*, p. 179; *Vyavahāramayūkha*, pp. 134, 135.]

NOTES

(B) '*Grahaṇam*,' acceptance of gifts. The meaning is that partition is proved by the existence of these transactions.—This is what is made clear in

the following text.—(C) '*Pravartantē*,' are carried on either collectively or severally.—(*Smṛtichandrikā*, p. 718.)

These are proofs (indicative) of partition.--(*Aparārka*, p. 756; also *Mitākṣarā*, p. 872.)

(A) '*Āgama*,' income of wealth;—'*vyaya*,' expenditure of wealth.—Such 'income' and 'expenditure' are meant as cannot be accounted for otherwise (than on the basis of separation).—(*Vivādaratnākara*, p. 607.)

(A) '*Dāna*,' giving, and '*grahaṇa*,' receiving,—independently of each other.—'*Cattle*,' *i.e.*, buying and selling of cattle—'food' and 'houses'—made separately.—'*Fields*,' separate.—'*Parigraha*,' acceptance of mortgage and such things.—'*Pākadharma*,' such as the *Pārvaṇa* and other rites performed with cooked food.—'*Āgama*,' acquiring of wealth.—'*Vyaya*,' expenditure of wealth.—(B) Similarly, if in the loan-transactions of one, another acts as witness, or surety,—or if one accepts a gift made by another,—then the two should be regarded as separate.—(*Vivādachintāmaṇi*, p. 253.)

If one brother makes a gift and another accepts it;—or if their houses and income and enpenditure are separately kept,—or if, when a loan is advanced by one, the other acts as witness or surety,—or when loan-transactions are carried on between themselves,—or if one of the brothers, having bought a thing for trading purposes, sells it to the other brother;—any one of such transactions can be carried on only among divided brothers; hence on the strength of these, the partition may be proved.—It would not be right to argue that "the presence of the plural member in '*yēṣām ētāḥ*.' (C) indicates that partition can be regarded as proved only when *all these* transactions are found collectively."—Because all these declarations are based upon equity, and there is nothing to show why the indicative force of any one of these severally should be weaker than that of all of them taken collectively.—(*Dāyabhāga*, pp. 231-232.)

(A) '*Dharma*,' the Vaishvadeva and other rites.—(*Vīramitrodaya*, p. 716.)

(A) '*Dāna*,' and '*grahaṇa*,' stand for the giving and receiving of loans;—these same are again reiterated in the second verse (B) in order to make clear what is meant in (A).—'*The acceptance of cattle, food, houses and fields*' [the reading here accepted is '*pratigraha*' instead of '*parigraha*'].—when done separately by individual coparceners, creates their ownership; the meaning is that 'among undivided coparceners, even though a single individual may do the acceptance, the ownership that is created pertains to all..—'*Dānadharma* (*v.l.*, for '*pākadharma*') stands for deeds of gift and the like—'*Āgama*' is '*mūlakalāprāvēshādi*,' *i.e.*, addition of interest to the capital (Kane).—(*Vyavahāramayūkha*, p. 135.)

43. बृहस्पति 25. 92.] पृथगायव्ययधनाः [*v.l.*, व्ययाधानं] कुसीदं च परस्परम् ।
वणिक्पथं च ये कुर्युर्विभक्तास्ते न संशयः ॥

Those who keep their income, expenditure and wealth [*v.l.*, mortgages] separate, and engage in mutual transactions

of money-lending and trade,—are undoubtedly *divided.*—(*Bṛhaspati*, 25. 92). [Quoted in *Aparārka*, p. 757; *Smṛtichandrikā*, p. 719; *Vivādaratnākara*, p. 608; *Vivādachintāmaṇi*, p. 255; *Parāsharamādhava*, p. 386; *Vīramitrodaya*, p. 717; *Vyavahāramayūkha*, p. 135; *Vibhāgasāra*, 20. 1—5; *Dāyanirṇaya*, 15. 2. 1.]

Notes

'*Vaṇikpatham*,' *Trade*.—(*Aparārka*, p. 757.)

'*Kusīdam*,' lending money on interest;—'*Vaṇikpatham*,' Trade.—'*Parasparam*,' goes with both.—(*Smṛtichandrikā*, p. 719.)

'*Parasparam*,' not conjointly, independently of one another. The term '*Pṛthak*' in the compound is to be construed with the second line also. [The meaning of the text according to the explanation would be that those who keep their income, expenditure and wealth separate, and carry on separate money-lending and trade independently of one another are undoubtedly *divided*']—(*Vivādaratnākara*, p. 608.)

The meaning is that those persons are to be regarded as *divided* who carry on, among themselves, such transactions as buying, selling and the like.—(*Vivādachintāmaṇi*, p. 255.)

In the absence of witnesses and other proofs, partition is to be regarded as proved by such facts as money-lending, trade, and so forth.—(*Parāsharamādhava*, p. 386.)

The compound '*Pṛthagāyavyayadhanāḥ*' is to be expounded as 'those whose *income, expenditure, and wealth* are separate.'—'*Kusīdam*,' money advanced on interest.—'*Vaṇikpatham*,' Trade.—'*Parasparam*,' one brother is the creditor and another is the debtor; one sells and another buys; and so forth—on the strength of these facts, which cannot be explained except on the basis of partition, Partition is to be regarded as established.—(*Vīramitrodaya*, p. 717.)

'*Vaṇikpatham*,' *Trade*. [This work adopts the reading 'धाने,' mortgage, in place of 'धना:,' wealth].—(*Vyavahāramayūkha*, p. 135.)

The meaning is that those who carry on these transactions among themselves should be regarded as 'divided'; because such transactions are the only effects of 'division' or 'separation'; as has been declared by Nārada in the text—'*Svabhāgān yadi dadyuste, etc.*' (p. 1261)—(*Vibhāgasāra*, 20 1—5.)

44. बृहस्पति] भ्रातरः संविभक्ता ये स्वरुच्या तु परस्परम् ।
विभागपत्रं कुर्वन्ति भागलेख्यं तदुच्यते ॥

When several brothers, on becoming divided, by mutual consent, draw up a document relating to the division, it is called the *Deed of Partition*.—(*Bṛhaspati*.) [Quoted in *Smṛtitattva II*, p. 179.]

45. याज्ञवल्क्य 2. 52.] भ्रातृणामथ दम्पत्योः पितुः पुत्रस्य चैव हि ।
प्रातिभाव्यमृणं साक्ष्यमविभक्ते तु न स्मृतम् ॥

Among brothers, between husband and wife, and between father and son, no surety-ship or loan-transaction, or bearing witness, can be permitted so long as they are not separated.—(*Yājñavalkya*, 2. 52.) [Quoted in *Smṛtichandrikā*, p. 718; *Vivādaratnākara*, p. 607; *Vivādachintāmaṇi*, p. 254; *Dvaitanirṇaya*, p. 39; *Parāsharamādhava*, p. 387; *Smṛtitattva II*, p. 179; *Vyavahāramayūkha*, p. 135; *Vibhāgasāra*, 19. 2—10.]

NOTES

Among brothers and the rest, so long as they are not separated, there can be no such transactions as loans, standing surety or bearing witness, for each other. It is in accordance with this that it can be determined with the help of witnesses and other evidence whether or not the parties are separated. The mention of the 'husband and wife,' between whom no separation is possible, serves the purpose of emphasising the fact that among other coparceners also, so long as they have not separated, there can be no such transaction as 'bearing witness' for each other and the like.—(*Vishvarūpa.*)

Among brothers and the rest, so long as their property has not been divided, surety-ship and other transactions among themselves have not been declared to be possible; in fact, they have been forbidden.—'*Dampati*,' husband and wife.—'*Prātibhāvya*', surety-ship, the person who guarantees the presence or trustworthiness or payment on behalf of another person is called the 'surety.'—The epithet '*Avibhakte*,' 'so long as they are not separated,' applies to the 'brother' or to the 'father and son,' not to the 'husband and wife'; as there is no 'division' of property between these latter, the wife being the owner of her husband's property simply by virtue of her being his wife; hence the property that is common between the husband and wife cannot be divided.—(*Aparārka.*)

'*Prātibhāvyam*,' surety-ship.—Among brothers, between husband and wife, and between father and son—so long as the property has not been divided—*i.e.*, prior to partition,—surety-ship, or bearing witness, or loan-transaction has not been 'permitted' by Manu and others—in fact, it has been positively forbidden; and the reasons for this lies in the fact that their property is common among them, and in the case of surety-ship and bearing witness, there is a chance, under certain contingencies, of their ending in the surety on the witness having to pay the amount in dispute; because the repayment of the debt is absolutely necessary.—This prohibition, however, is only of such transactions being entered into without mutual consent; with mutual consent, even among undivided members of the family, surety-ship and other transactions do take place; after partition, of course, it takes place even without mutual consent.—An objection is here raised—"As between husband and

wife, it is not right to forbid surety-ship, etc., *prior to separation* ; as there is no separation possible between them, such a qualification would be meaningless. That there is no separation (or division of property) between husband has been shown by Āpastamba.—'There is no division between husband and wife.''—*Answer* : True ; but 'absence of division' here spoken of is only with reference to such rites and their results as are performed with the help of *Shrauta* and *Smārta*, fires,—not to all acts or to property. That such is the meaning of Āpastamba's text is clear from the fact that after having said that 'there is no division between husband and wife,' Āpastamba goes on to give the reason—'because by virtue of the marriage-rite, there is companionship between them in regard to acts and the merit and reward resulting therefrom.' The meaning of this is—'because companionship in regard to acts from the time of marriage onwards is found to be declared in the *Shruti*—in such texts as 'The husband and wife should instal the fire,'—therefore from the fact of their joint liability towards the installing of fire, it follows that their liability towards all their acts that are performed with the help of that fire is also joint. Similarly by virtue of such Smṛti texts as 'all *Smārta* rites are to be performed in the marriage-fire,' their liability towards all acts performed with the help of the marriage-fire also must be regarded as joint. From this it follows that in regard to acts other than those performed with the help of the *Shrauta* and *Smārta* fires,—*i.e.*, such acts as works of public utility,—the liability of the husband and the wife must be distinct. Then again, in regard to the rewards of spiritual merit also,—such as Heaven and the like, we find it declared that the claims of the husband and wife are joint,—in such texts as '*Divi jyotirajaramārabhētām*' ('In heaven the two produce for themselves an imperishable effulgence'). From this also it follows that in regard to their actions to the performance of which their liability is joint, their claims to the rewards of such acts also must be joint ; but not so the wife's claims to the rewards of such works of public utility as she has done with her husband's permission [her claims in regard to those not being shared by the hubsand].—"But we find the joint character of their ownership of property also declared in the subsequent texts of Āpastamba—such as 'so also in regard to the ownership of property,' 'if during the husband's absence the wife makes gifts, she is not to be regarded as a thief."—True ; but all that these texts show is the wife's ownership over the property, and not that there can be no partition between them. Because the meaning of the texts quoted is that 'The wife has ownership over the property also—why ?—because if during her husband's absence she makes necessary gifts, such as the feeding of guests and the like, she is not regarded by Manu and others as a thief,—and because it is so, therefore the wife also has ownership over the property ; as otherwise her action would involve theft.' From all this it follows that there can be separation of the wife's property also, but only with the husband's consent, not merely by her own wish ; as Yājñavalkya himself says—'If the man is making an equal division of property (among his sons) he should make his wives also equal sharers.'—(*Mitākṣarā*.)

This text mentions the persons to whom loans should not be advanced, and in that connection forbids other things also.—'*Avibhaktā*,' when there has been no division ;—among brothers, between husband and wife, and between

father and son,—surety-ship, advancing of loan, bearing witness in support of a matter in dispute,—all this is '*not permitted*'—by the Smṛtis.—The particle '*Atha*' is meant to include 'uncle and nephew' and such others; and the particle '*cha*' is meant to include reunited coparceners; and the particle '*eva*' implies that the suretyship and other things are never accomplished;—the particle '*hi*' only serves to fill up the metre;—the particle '*tu*' serves to exclude cases where there is consent, and also where the property involved belongs exclusively to one of the members concerned (and is not joint). Hence in cases where the other member has accorded his consent, the son can be the surety or witness for the father and so forth; similarly, even though the husband and wife may not have been separated, yet loan-transaction is permissible out of such property as forms part of the wife's dowry.—After partition, of course, there can be surety-ship among brothers; because the text says 'so long as they are not divided,' so that there would be no objection to such suretyhip.—(*Vīramitrodaya's Commentary on Yājñavalkya.*)

It follows from this that the person advancing the loan must have been separated from the person receiving it.—(*Smṛtichandrikā*, p. 718.)

'*Mutually*' has to be added.—Though Āpastamba has said that there can be no division between husband and wife, yet in view of the declaration of Yājñavalkya to the effect that—'if a man is dividing property equally he should make his wives equal sharers,' it is clear that Yājñavalkya has permitted the division between husband and wife under certain circumstances; and it is in this sense that we have to take the term 'husband and wife' in the present context, so that there is no inconsistency.—(*Vivādaratnākara*, pp. 607-608.)

Among these,—prior to partition,—there can be no such mutual transaction as surety-ship and the rest.—The following objection may be raised—"In view of Āpastamba's declaration that there can be no partition between husband and wife, there can be no possibility of those being separated."—The answer to this is as follows:—

The text 'the husband and wife shall instal the fire' declares the joint liability of the husband and wife towards the installing of fire;—now in connection with the acts to be performed with the help of the fire thus installed, there are several acts that have been prescribed as to be done by the husband or by the wife,—such as 'the priest initiates the sacrifice with the *Mekhalā*,' 'and his wife with the *Yoktra*,' 'the wife examines the clarified butter,' 'the sacrificer ties the kusha-bundle,' and so forth; all these acts being *shrauta*, acts (the liability of whose performance rests jointly on the husband and wife).—Similarly, we have the text 'the Samārta rite is performed with the marriage-fire,' which shows that in regard to those acts that are performed with the help of the marriage-fire, which is kindled by the husband and wife conjointly,—such as the *Āvasathya*, and other Homas, the liability of the husband and wife is joint.—Then, again, in regard to the reward of both these sets of acts (*Shrauta* and *Smārta*), the claims of the husband and wife are joint; as is clearly indicated by such texts as 'In heaven they produce an imperishable effulgence.' But there is no such joint claim in regard to such works of public utility as are not done with the help of either the Shrauta or the Smārta fire.—Thus there is not the least possibility of Āpastamba's text meaning that there is no division of property between the husband and wife; 'specially as that text

of Āpastamba occurs in the section dealing with the subject of 'the wife's examination of the Clarified Butter'; and also because the said text is followed by the declaration that 'by reason of their marriage there is companionship between the husband and wife in regard to religious acts and also to the rewards of spiritual merit.'—"In the *Adhikaraṇa* on Wife it has been declared that the wife has ownership over husband's property; and under the circumstances, partition between them would be quite possible if there were not a direct denial of such partition (in the text of Āpastamba)."—There is no force in this; because it has to be borne in mind that 'the wife, the son and the slave' have been declared to be 'without property.' Then again, as a matter of fact, all that the section on 'wife' does is to establish the joint liability of the husband and wife towards the sacrificial performance; and it does not set aside the declaration regarding women being 'without property'; specially as the said section being purely ratiocinative, cannot set aside a direct declaration of the Smṛti. Finally, as regards the possibility of partition between husband and wife, it is clearly indicated by Yājñavalkya's text to the effect that "wives should be made equal sharers";—such is the view of the *Ratnākara*.—(*Vivādachintāmaṇi*, pp. 254-255.)

'*So long as they are not separated*'—from one another—[then follows a reproduction of the discussion on Āpastamba's *Sūtra* as detailed in *Mitākṣarā* and *Vivādachintāmaṇi*; and then follows the following].—It is for these reasons that in the performance of works of public utility, which does not require consecrated fire, the liability of the husband and wife is not joint. That is the reason why, even in the absence of a wife, man is entitled to do these works (which he is not, in regard to the rites requiring a consecrated fire), specially as there are no texts precluding such performance.—It might be argued that "such assertions as 'the agent accompanied byhis wife, sons and grandsons' would preclude the possibility of such performance by a man without a wife."—But it is not so; because if this text were relied upon, then a man, having no sons and grandsons, would not be entitled to the performance of the acts.—(*Dvaitanirṇaya*, pp. 39-40.)

Though (*a*) in view of the assertion of Āpastamba to the effect that 'no division is possible between the husband and wife, as also in regard to the rewards of merit and demerit,' there can be no division between husband and wife;—and (*b*) in the section dealing with the 'wife' the wife's ownership has been restricted solely to the property of her living husband,—and this is right also, because of the declaration that 'property is common between husband and wife,' says the *Shrādhaviveka*; where 'common' means *belonging to both*;—though all this is so, yet the text of Yājñavalkya—'If the man is making an equal division, he should make his wives equal sharers'—clearly indicates that when the man is dividing his property among his sons, he has to assign a share also to his sonless wife; and it is in view of this that the present text has included 'the husband and wife.'—Some people have held (as in *Vivādaratnākara* and *Vivādachintāmaṇi*) that—"In view of the assertion (by Manu) that the wife, the son and the slave have no property, what has been said by Āpastamba in regard to the impossibility of partition between husband and wife has to be taken as asserting their joint liability in regard to the Vedic rites only."—But this is not right, beacause the second line of

Manu's text referred to—'whatever they (the wife, the son and the slave) acquire belongs to him, to whom they themselves belong'—clearly indicates that the wife, the son and the slave are not free to spend, without the permission of their master, what they have acquired themselves (and it does not refer to what they might inherit.) Further, the subsequent assertion of Āpastamba—'so also in regard to the rewards of spiritual merit and demerit'—mentions those rewards separately; for these reasons, inasmuch as the denial 'there is no partition between husband and wife,' presupposes a corresponding affirmation, it indicates the ownership of both husband and wife over the same property. Otherwise, if the ownership of both were not there, there would be no possibility of partition between them, and hence there could be no denial or prohibition of it. This same conclusion is also derived from the declaration of Hārīta—'because the wife has become one with the husband, through the offerings of cooked rice, mantras, libations and penances.' —*Smṛtitattva II*, pp. 179-180.)

The meaning is that inasmuch as *surety-ship* and other transactions among undivided coparceners have been forbidden, disputes among them regarding partition should be settled by persons other than those.—As between husband and wife, it is only in matters relating to *Shrauta* and *Smārta* rites that their title has been declared to be joint; in regard to property, therefore, partition is certainly possible between them; a denial of this fact would be contrary to many texts. The *Vivādaratnākara* has also declared that the fact of there being partition between husband and wife is clearly indicated by the text of *Yajñāvalkya*, which declares that 'wives should be made equal sharers.' Consequently there is nothing wrong in the text laying down a rule in regard to cases where the husband and wife are '*undivided*.'—(*Vibhāgasāra*, 20. 1. 1.)

46. (?)] युक्तिष्वप्यसमर्थासु शपथैरेव तन्नयेत् ।

If there are no cogent reasons, the matter may be decided by means of oaths (ordeals.)—(?). [Quoted in *Smṛtichandrikā*, p. 720; *Parāsharamādhava*, p. 387.]

NOTES

Though this text speaks of oaths (and ordeals) as the means of ascertaining the fact of partition, yet recourse should not be had to them; as Yājñavalkya (2. 149.) has distinctly forbidden such recourse in this matter.—(*Smṛtichandrikā*, p. 720.)

In cases where the fact of the partition cannot be ascertained by means of witnesses, documents and possession, it may be done by means of ordeals. But this has been prohibited by Vṛddha—Yājñavalkya (a variant of Yājña. 2. 150).—(*Parāsharamādhava*, p. 387.)

47. बृहस्पति] यद्येकशासने ग्रामक्षेत्रारामाश्च लेखिताः ।
एकदेशोपभोगेऽपि सर्वे भुक्ता भवन्ति ते ॥

When a village, a field, and a garden have all been entered in a single deed of gift,—if one has possession of only a part of the gift, his possession over the entire gift becomes established.—(*Bṛhaspati.*) [Quoted in *Smṛtitattva II*, p. 179.]

NOTES

'*Shāsane*'—in a deed or document. If even a part of the gift remains in the possession (of the previous owner) the whole gift becomes invalidated;—just as in the case of sale.—(*Smṛtitattva II*, p. 179.)

48. बृहस्पति] (A) संविभागक्रयप्राप्तं पित्र्यं लब्धं च राजतः ।
स्थावरं सिद्धिमाप्नोति भुक्त्या हानिमुपेक्षया ॥
(B) प्राप्तमात्रं येन भुक्तं स्वीकृत्यापरिपन्थितम् ।
तस्य तत् सिद्धिमाप्नोति हानिश्चोपेक्षया तथा ॥

(A) Acquired by partition, obtained by purchase, inherited from father, obtained from the king,—such immovable property acquires validity by possession and invalidity by neglect.—(B) As soon as a property has been obtained, if has been taken possession of without opposition, the man's ownership becomes established; it becomes annulled by neglect.—(*Bṛhaspati.*) [Quoted in *Smṛtitattva II*, p. 179.]

NOTES

Over various kinds of property the ownership becomes established by possession; and it becomes annulled by neglect (*i.e.* by adverse possession)—(*Smṛtitattva II*, p. 179.)

49. बृहस्पति] साहसं स्थावरस्वाम्यं प्राग्विभागश्च रिक्थिनाम् ।
अनुमानेन विज्ञेयं न स्युर्यत्र च साक्षिणः ॥
कु [*v. l.*, व] लानुबन्धव्याघातहोढं साहससाधकम् ।
स्वस्य भोगः स्थावरस्य, विभागस्य पृथक्धनम् ॥

If there are no witnesses, crime, ownership of immovable property, and previous partition among coparceners can be ascertained by means of Inference. Hereditary enmity [or

v.l., application of force], mutual rivalry and signs of property taken by force, are the indications of *crime*.—One's own possession is indicative of ownership over immovable property ;—and separate belongings indicate previous partition.—(*Bṛhaspati.*) [Quoted in *Smṛtichandrikā*, p. 719 ; *Parāsharamādhava*, p. 387 ; *Vīramitrodaya*, p. 717 ; *Dāyabhāga*, p. 231]

NOTES

'*Prāgvibhāga*'—The partition that had taken place before the dispute regarding the partition arose.—'*Anumāna*'—Indicative signs. Some of the signs indicative of crime and the rest are mentioned in the second verse '*Kulānubandhaḥ*,' hereditary enmity ;—'*Vyāghātaḥ*,' mutual rivalry ;—'*Hoḍhan*,' finding of part of what has been taken by force.—'*Svasya bhogaḥ*,' one's own possession.—(*Smṛtichandrikā*, p. 719.)

The signs indicative of crime and the rest are described in the second verse.—'*Kulānubandhaḥ*.' hereditary connection.—'*Pṛthagodhanam*,' separate acceptance of gifts and the rest have been described as indicative of partition.—(*Pārasharamādhava*, p. 387.)

50. बृहस्पति] स्वेच्छाकृतविभागो यः पुनरेव विसंवदेत् ।
स राज्ञांशे स्वके स्थाप्यः शासनीयोऽनुबन्धकृत् ॥

If one who has made the partition by his own wish deviates from it he shall be confined by the king to his own share ; if he persists, he should be punished.—(*Bṛhaspati.*) (Quoted in *Aparārka*, p. 757 ; *Parāsharamādhava*, p. 388 ; *Vīramitrodaya*, p. 715 ; *Vyavahāramayūkha*, p. 137.]

NOTES

'*Anubandha*' is *persistence*.—(*Aparārka*, p. 757) also *Parāsharamādhava*, p. 338 ; also *Vīramitrodaya*, p. 715, and *Vyavahāramayūkha*, p. 137.)

51. प्रजापति] दायादैर्नाभ्यनुज्ञातं यत्किञ्चित् स्थावरे कृतम् ।
तत्सर्वमकृतं ज्ञेयं यद्येकोऽपि न मन्यते ॥

If something has been done in regard to an immovable property without the consent of the coparceners, it should be regarded as *not done* (invalid), if even one of them does not agree to it.—(*Prajāpati.*)—[Quoted in *Smṛtichandrikā*, p. 645.]

NOTES

The meaning is that fields should be partitioned with the consent of all the coparceners.—(*Smṛtichandrikā*, p. 645.)

52. कात्यायन] गूढद्रव्याभिशङ्कायां प्रत्ययस्तत्र कीर्तितः ।

For cases where there is a suspicion that some wealth has been concealed (by a coparcener) ordeal has been ordained.—(*Kātyāyana.*) [Quoted in *Smṛtichandrikā*, p. 636; *Aparārka*, p. 723; *Vivādaratnākara*, p. 498; *Vyavahāra-mayūkha*, p. 123.]

NOTES

'*Pratyaya*,' ordeal; and this should be of the form of the '*Kosha*' (see above).—(*Smṛtichandrikā*, p. 636.)

'*Pratyaya*,' ordeal. Where the '*Kosha*' form of ordeal is specially mentioned it is to be taken as standing for ordeal in general.—(*Aparārka*, p. 723.)

'*Pratyaya*' is ordeal.—(*Vivādaratnākara*, p. 498.)

53. बृहस्पति] येनांशो यादृशो भुक्तस्तस्य तं न विचालयेत् ।

If a person has enjoyed a certain property that should not be disturbed.—(*Bṛhaspati.*)

NOTES

(See III, 12 and 279.)

54. कात्यायन] वसेयुर्दश वर्षाणि पृथग्धर्माः पृथक्क्रियाः ।
भ्रातरस्तेऽपि विज्ञेया विभक्ताः पैतृकाद् धनात्
[*v.l.*, पैतृके धने] ॥

If a number of brothers have lived for ten years, separately carrying on their religious duties and business transactions—they shall be regarded as *separated* from the father's estate.—(*Kātyāyana.*) [Quoted in *Smṛtichandrika*, p. 719; *Aparārka*, p. 757.]

NOTES

The term '*bhratṛ*' here stands for *coparceners* in general;—and *Paitṛkadhana*' stands for *heritage* in general.—(*Smṛtichandrikā*, p. 719.)

55. नारद 13. 36.] विभागधर्मसन्देहे दायादानां विनिर्णयः ।
ज्ञातिभिर्भागलेख्येन पृथक्कार्यप्रवर्तनात् ॥

When there is a dispute regarding partition and its character, the decision of the dispute among the coparceners

shall be arrived at through kinsmen, through the deed of partition, or by the separate carrying on of business.—(*Nārada*, 13. 36.) [Quoted in *Smṛtichandrikā*, p. 717; *Madanapārijāta*, p. 689; *Parāsharamādhava*, p. 386; *Vyavahāramayūkha*, p. 132; *Vīramitrodaya*, p. 716; *Vibhāgasāra*, 19. 1—11.]

NOTES

See p. 599.

'*Vibhāgadharmasandēha*'—whenever there is '*sandēha*,' 'dispute,'—'*dāyādānam*,' among coparceners,—in regard to the '*vibhāga*,' the 'partition' itself—one of the coparceners saying 'there has been no partition at all between us,'—and in regard to the '*dharma*,' 'character' of the partition,—the disputant saying 'all our property was not partitioned;'—the decision shall be arrived either '*jñātibhiḥ*,' through witnesses in the shape of kinsmen,—or through the deed of partition,—or by means of reasonings based upon such indicative facts as that of the parties carrying on their business separately and so forth;—the 'separate carrying on of their business' means the separate performance of the *Vaishvadēva* offering, bestowing of alms, honouring of guests and such other religious acts.—How this fact indicates separation is made clear by Nārada himself in the text '*Bhrātṛṛṇāmavibhaktānām—etc.*' (13. 37—see below).—(*Vyavahāramāyūkha*, p. 132.)

The special mention of '*kinsmen*' shows that so long as kinsmen are available as witnesses other witnesses shall not be entertained.—'*Kārya*,' agriculture, and the like,—the separate carrying on of them.—(*Vīramitrodaya*, p. 716.)

56. नारद 13. 37.] भ्रातॄणामविभक्तानामेको धर्मः प्रवर्तते ।
विभागे सति धर्मोऽपि भवेत्तेषां पृथक् पृथक् ॥

Among undivided brothers, the performance of religious acts is only one (in common); after division, the performance of religious acts would have to be separate for each.—(*Nārada*, 13. 37.) [Quoted in *Smṛtichandrikā*, p. 717; *Mitākṣarā*, p. 872; *Madanapārijāta*, p. 689; *Vivādaratnākara*, p. 606; *Vivādachintāmaṇi*, p. 253; *Parāsharamādhava*, p. 386; *Vīramitrodaya*, p. 716; *Vyavahāramayūkha*, p. 132.]

NOTES

See p. 24.

'*Dharma*'—Vaishvadēva and other offerings.—(*Smṛtichandrikā*, p. 718.)

Separate agriculture and other operations and separate performance of the Five Great Sacrifices and other rites have been declared here by Nārada to be indicative of partition.—(*Mītākṣarā*, p. 872.)

'*Dharma*—performance of the *Vaishvadēva* and other rites.—(*Vivādaratnākara*, p. 607; also *Vivādachintāmaṇi*, p. 207.)

Here the 'subject' (*i.e.*, the principal noun in the sentence) is '*avibhaktānām*,' 'undivided,' not '*bhrātṛṛṇām*'; that is, no significance attaches to the

special mention of the 'brothers,' all that is meant is 'among undivided members of a joint family'; hence the rule applies to the case of all undivided members, such as father, grandfather, son, grandson, paternal uncle, nephew, and so forth.—Though in reality '*Tantratā*'—*i.e.*, the connection of one act with several agents is possible only in cases where the time, place, and agent are the same throughout, yet, in the present case, though there are several agents in the shape of the undivided members, yet the connection is accepted in view of the express injunction in the present text.—But, as a matter of fact, all those acts that are done with the help of *Shrauta* or *Smārta* fires are to be separately performed, even by the undivided members;—the *Shrāddhas* that are offered to the ancestors on the New Moon Day are to be performed by the uncle and nephew, etc., separately, as the three ancestors of these would not be the same; but in the case of uterine brothers,—if they have not installed the *Shrauta Fire*,—there will be a single performance; the three ancestors of all being the same. But in case they are at different places—the performances have to be separate. For those who have installed the fire, all the acts that are done with the help of that fire shall be performed separately. But such acts as the worship of the Household Deity, the Vaishvadeva Rites and the like may be performed jointly only once.—(*Vyavahāramayūkha*, pp. 132-133.)

57. वृद्धयाज्ञवल्क्य] विभागधर्मसन्देहे बन्धुसाक्ष्यभिलेखितैः ।
विभागभावना कार्या न भवेद् दैविकी क्रिया ॥

Whenever there is a dispute regarding partition and its character, the proving of the partition should be done by means of kinsmen, witnesses and documents; and no supernatural evidence shall be admissible.—(*Vṛddha-Yājñavalkya*.) [Quoted in *Smṛtichandrikā*, p. 720; *Parāsharamādhava*, p. 387; *Vyavahāramayūkha*, p. 135.]

NOTES

The inadmissibility of ordeals here asserted is meant for those cases where other kinds of evidence are available.—(*Vyavahāramayūkha*, p. 135.)

[This verse appears to be only a variant of Yājñavalkya 2. 150, and would have been treated as such; but the works quoting it have done so with special reference to the ordeal, '*daivikī kriyā*,' of which there is no mention in Yājñavalkya, 2. 150.]

APPENDIX.

[*Contributed by Professor Saratchandra Chaudhri, of the Allahabad University*].

CHAPTER I § (*b*)

Page 8. Text No. 13.

"Divided or undivided . . . sell it."

According to the strict theory of the *Mitākshara* law each coparcener has a proprietary interest in the *whole* of the coparcenary property. No coparcener, therefore, can alienate his interest in the property without the consent of the other coparceners. The *Mitakshara* relies on the above text in support of the position. This anti-alienation theory has been very strictly applied in the United Provinces and in Bengal (wherever the *Mitakshara* is administered).[1] In Madras and Bombay, however, the rule is different, for there a coparcener may sell, mortgage, or otherwise alienate *for value his* undivided interest in coparcenary property without the consent of the other coparceners.[2]

***Ibid.* Text No. 14.**

"Those that are born . . . condemned."

This text so far as it applies to sons yet unbegotten was treated by the Madras High Court as merely a moral precept, and they held that the right of an unborn son only extended to the case of one who was in the womb at the time of the act complained of.[3]

Page 9. Text No. 16.

"The wife . . . belong."

This text has been taken to be evidence of the existence of the patriarchal principle in India as in Rome.[4]

[1] The following cases may be referred to where the text has been discussed or referred to: *Madho Parshad* v. *Mehrban Singh*, 17 I. A., 194; S. C. 18 Cal., 157; *Sadabart Prasad* v. *Foolbash*, 3 B. L. R., 31 (F. B.); *Balgobind Das* v. *Narain Lal*, 20 I. A., 116; S. C., 15 All., 339.

[2] *Suraj Bunsi* v. *Sheo Persad*, 6 I. A., 88, 101-2; S. C. 5 Cal., 148, 166. And, generally, *Mulla : Principles of Hindu Law*, 7th ed., §§ 256, 257, 258.

[3] *Yekeyamian* v. *Agniswarian*, 4 Mad. H. C., 307. See also *Balwant Singh* v. *Rani Kishori*, 25 I. A., 54, 68; S. C. 20 All., 267, 285. As to the rights of a son in the mother's womb, see *Mulla*: *Principles of Hindu Law*, 7th ed., § 270 (3).

[4] *Ponnappa Pillai* v. *Pappuvayyangar*, 4 Mad., 1, 32 (F. B.), *Per Muttusami Ayyar*, J.

CHAPTER I § (c)

The texts here describe the state of the family, so long as it retained its patriarchal form, and the son could not have compelled his father to give him a share at all, or any larger portion than he chose. The doctrine that property was by birth—in the sense that each son was the equal of his father—had then no existence. The son was a mere appendage to the father, and had no rights of property as opposed to him. Such seems to be the purport of the texts. Subsequently a partition was allowed even without the father's wish, if he was old, disturbed in intellect or diseased; that is, if he was no longer fit to exercise his paternal authority. A final step was taken when it was acknowledged that father and son had equal ownership in ancestral property; that is to say, when the Patriarchal Family had changed into Joint Family. This was the period of the commentators who wrote when all these restrictions had passed away. But no Hindu lawyer admits that any sacred text conflicts with existing law. And they attempt to reconcile the irreconcilable. Such is the case with the *Mitakshara*. It expressly asserts the right; and both a son and a grandson are entitled to a partition of movable and immovable property in the possession of a father, even against his consent. This has now been settled by express decisions.[1]

CHAPTER I § 2 (a)

Text No. 47.

"What is left . . . a debtor." In order to determine what property is available for partition provision must first be made for the personal debts of the father not tainted with immorality.[2]

Text No. 52.

"If anyone . . . among the rest."[3]

Text No. 55.

"Among them . . . double share."[3]

Text No. 58.

"If a landed property . . . the fourth part, etc."

[1] *Nagalinga* v. *Subbiramaniya*, 1 Mad. H. C., 77; *Subba Ayyar* v. *Ganesa*, 18 Mad., 179, and other cases cited in *Mayne : Hindu Law and Usage*, 9th ed., p. 681, f.n. (*l*).

[2] *Koduru Venkureddi* v. *Magunta Venku Reddi*, 50 Mad. 535.

[3] *Gooroo Churn Doss* v. *Goluckmoney Dossee*, Fulton, 165.

In order that the rule may apply certain conditions should be fulfilled. These were summed up by the Madras High Court.[1]

Text No. 60.

"If in a joint family . . . so says Brihaspati."[2]

Text No. 61.

"If one brother . . . even though, etc."[3]

GENERAL

"Gains of Science": The observations below apply to all texts wherein this expression occurs.

Regarding the impartibility of "Gains of Science" mentioned in the body of texts commencing with No. 68, the matter falls to be decided with reference to the Hindu Gains of Learning Act (XXX of 1930) and the conflict that existed on the subject need not detain us now. The object of the Act is "to remove doubt and to provide a uniform rule," and under it all gains of learning, *whether made before or after the commencement of the Act*, constitute the self-acquired property of the acquirer. Under the existing rulings the term "science" was interpreted to mean *special* as distinguished from *ordinary* learning, and it was held that the gains which were the result of *special* learning imparted at the expense of joint family funds were divisible, whereas the gains made by means of the latter kind of learning, though imparted in the same way, were indivisible. It will suffice to draw attention to two cases only.[4]

Texts Nos. 75—79. These texts mention "gifts of affection" as among impartible property since they are "self-acquired." On the question whether property obtained by gift or bequest from a paternal ancestor will be the absolute property of the donee or legatee, or will be ancestral property with reference to his issue, and so divisible, there appears to be a great conflict of opinion. The

[1] *Naraganti Achammagaru* v. *Venkatachalapati Nayanivaru*, 4 Mad., 250, 259. Redemption not 'recovery.' *Visalatchi Ammal* v. *Annasamy Sastry*, 5 Mad. H. C. R., 150; see also *Bajaba* v. *Trimbak Vishvanath*, 34 Bom., 106. See also, a decree in a suit for possession, not recovery; *Bissessur Chuckerbutty* v. *Seetul Chunder Chuckerbutty*, 9 W. R., 69.

[2] By the Hindu Gains of Learning Act, XXX of 1930, such gains are the separate property of the acquirer, and, therefore, indivisible.

[3] But see *Shamachurn Bundopadhya* v. *Mohesh Chunder Bundopadhya*, Cal. S. D. A., 1.

[4] *Metharam* v. *Rewachand*, 45 I. A., 41; S. C., 45 Cal., 666; *Gokal Chand* v. *Hukam Chand-Nath Mal*, 48 I. A., 162; S. C., 2 Lah., 40.

authorities are all collected by the Privy Council in *Lal Ram Singh* v. *Deputy Commissioner of Partabgarh*,[1] but no attempt has been made to reconcile the conflict. Their Lordships postpone the consideration of the question by themselves and say that they will decide it when the time comes on their own construction of the original authorities.

It has been held, however, that a gift of property made by a father *on the occasion of the son's marriage* is not ancestral property in the hands of the son. It comes within the words "gift at nuptials (औद्वाहिक)," and it is his separate property[2].

Text No. 80.—" Where a man . . *gains of learning*." (Katyayana.) This definition of Katyayana has been held not to be exhaustive.[3]

Text No. 83.—" A cloth, a conveyance . . . declare to be impartible." (Manu.)

Cf. also, **Texts Nos. 91 and 92.**

On this Mayne observes : " Other matters were originally declared to be indivisible from their nature, such as apparel, carriages, riding horses, ornaments, dressed food, water, pasture-ground and roads, female slaves, houses or gardens, utensils, necessary implements of learning or of art, documents evidencing a title to property, rights of way, and rights to wells or water." [4] (*Hindu Law and Usage*, 9th ed. p. 674.) Where part of the property consists of idols and places of worship, which are valuable from their endowments, or from the respect attaching to their possessor, the members will be decreed to hold them by turns unless they can agree to a joint worship.[5] In the case of family idols the Bombay High Court directed on a partition that the senior member should take possession of them and the property appertaining to them, with liberty to the other members to have access to them for the purpose of worship. [6]

[1] *Lal Ram Singh* v. *Deputy Commissioner of Partabgarh*, 50 I. A., 265; S.C. 45 All., 596.

[2] *Muddun Gopal* v. *Ram Buksh*, 6 W.R., 71, 73. See also *Adhar Chandra* v. *Nobin Chandra*, 12 Cal. W.N., 103.

[3] *Durga Dat Joshi* v. *Ganesh Dat Joshi*, 32 All., 305. See the observations of *J.C. Ghosh : Hindu Law*, 3rd ed., 613.

[4] Rights to wells or water: *Govind Annaji* v. *Trimbak Govind*, 36 Bom., 275. Rights of way : *Nathubhai Dhirajram* v. *Bai Hansgavri*, 36 Bom., 379.

[5] *Madan Mohan* v. *Rakhal Chandra*, 57 Cal., 570 ; the question here related to the division of a *thakurbari*. The case is important. It follows XXV S. B. E. for the translation of the term *yogakshemam* in the text.

[6] *Damodardas* v. *Uttamram*, 17 Bom., 271.

The summary of indivisible articles mentioned by Mayne covers other items mentioned in the following texts. [*Cf.* **Texts Nos. 100—102.**]

Text No. 84.—"Those by whom... in proportion to their shares."

Mayne observes as follows: "As property of this sort increased in value the strict letter of the texts was explained away.... corresponding values to the others." (**Mayne** : *Hindu Law and Usage*, 9th ed., p. 674).

Texts Nos. 100 and 102.—A partition of a dwelling-house will be decreed if insisted on,[1] but the Court will, if possible, try to effect such an arrangement as will leave it entire in the hands of one or more coparceners.[2]

Text No. 96.—"If the father ... self-acquired property." (Manu.)

Text No. 97.—"If anyone ... acquired by learning." (Yajnavalkya.)

"Property unjustly detained which could not be recovered before" is the import of Manu in this text. In other words, the property must have passed into the possession of strangers, and be held by them *adversely to the family*. It must be an actual recovery of possession, and not merely the obtaining of a decree for possession.[3]

As to the result of such a recovery, there seems to be a conflict in the *Mitakshara*. (See **Mayne** : *Hindu Law and Usage*, 9th ed., §287).

Section 3

Persons Not Entitled to Inherit

Text No. 108.—"Eunuchs and outcastes .... entitled to inheritance."

[1] *Hullodhur* v. *Ramnauth*, Marsh, 85.

[2] *Rajcoomaree* v. *Gopal*, 3 Cal., 514. In a later case the Court said; "The principle of partition is that if property can be partitioned without destroying the intrinsic value of the whole property or of the shares, such partition then ought to be made. If, on the contrary, no partition can be made without destroying the intrinsic value then a money compensation should be given instead of the share which would fall to a coparcener by partition." *Ashanullah* v. *Kali Kinkur*, 10 Cal., 675.

[3] *Visalatchi* v. *Annasamy*, 5 Mad. H. C. R., 150, where certain family property was allotted to a member of one branch of the family *in virtue of a compromise* and was *subsequently purchased* by a member of another branch with his own money, it was held that it was the self-acquired property of the purchaser, and that his brother who was joint with him was not entitled to any interest in it. *Bajaba* v. *Trimbak*, 34 Bom., 106.

Outcastes are now relieved by Act XXI of 1850 (Freedom of Religion). "So much of any law or usage now in force within the territories of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law." The effect of this section is that degradation or exclusion from caste, from whatever cause it may arise, is absolutely immaterial in all cases where, except for the Act, it would have debarred a person from enforcing or exercising a right.[1] The question whether the change of religion of one coparcener before the Act of 1850 had the effect of vesting the whole estate in the other was decided in a case before the Judicial Committee. Their Lordships held that under Regulation VII of 1832, §9, the principle of which was extended by Act XXI of 1850, on that coparcener's abandonment of Hinduism, the other did not acquire any enforceable right to the convert's share in the joint property. They declared that the legislature had virtually set aside the provisions of Hindu law which penalised renunciation of religion or exclusion from caste.[2] The Act only protects the actual person who either renounces his religion, or has been excluded from the communion of any religion, or has been deprived of caste. Consequently, where the property of a Muhammedan converted from Hinduism has passed according to the Muhammedan law to his descendants, Hindu collaterals cannot claim by virtue of the Act to succeed under Hindu law.[3]

The texts mention certain ***physical and mental defects*** as grounds for exclusion. Under the Hindu Inheritance (Removal of Disabilities) Act, (No. X of 1928), no person, other than a person ***who is and has been from birth a lunatic or idiot***, is excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect. The Act came into force on September 20, 1928, and it is not retrospective. The Act does not apply to any person governed by the Dayabhaga School of Hindu law. As exclusion from inheritance or partition the only disquali-

[1] *Bhujjun* v. *Gya*, 2 N.-W.P., 446; *Honamma* v. *Timannabhat*, 1 Bom., 559.

[2] *Khunnilal* v. *Gobind*, 38 I. A., 87; S.C. 33 All., 356.

[3] *Mitar Sen Singh* v. *Maqbul Hasan Khan*, 57 I. A., 313.

fications that will matter now are ***congenital lunacy*** and ***congenital idiocy.***

It will be seen from **Text 109** that to the list of causes for exclusion Yajnavalkya has added "other incurable diseases."[1]

An interesting question on which the Hindu law is silent is whether a murderer is entitled to succeed to the estate of the person whom he has murdered. The question has now been answered by the Privy Council, and it has been decided that a murderer is disqualified from inheriting on the principles of justice, equity and good conscience.[2]

The group of texts commencing with No. 109 *et seq.* shows that except in the case of degradation, the disability is purely personal, and does not extend to the *legitimate issue* of the disqualified person. Their *adopted sons* will be in no better position as regards ancestral property than themselves, and only entitled to maintenance out of it. The Bombay High Court holds that the exclusion of a murderer is only personal under the Hindu law, and accordingly the widow of the murderer should be allowed to inherit the property which the murderer himself was disqualified from inheriting.[3] But a different view has been taken in Lahore where it has been held that a murderer cannot be regarded as a fresh stock of descent; he must be regarded as not existing when the succession opens on the death of his victim. Accordingly it has been held that not only is the murderer excluded from inheritance, but also his son or any other person claiming heirship through him.[4]

Text No. 118.—"Those who have entered other life-stages . . . have to be supported." (Vashistha.)

The rule herein applies only to members of the twice-born classes and not to Sudras unless some usage or custom to the contrary is proved.[5]

[1] *Kayarohana* v. *Subbaraya*, 38 Mad., 250. (What kind of leprosy would debar a person.)

[2] *Kenchava* v. *Girimallappa*, 51 I. A., 368; S.C. 48 Bom., 569.

[3] *Gangu* v. *Chandrabhagabai*, 32 Bom., 275.

[4] *Jind Kaur* v. *Indar Singh*, 3 Lah., 103. See also *Kenchava* v. *Girimallappa*, 51 I. A., 368; S. C. 48 Bom, 569 (sister excluded).

[5] *Sobhaddi Lal* v. *Gobind Singh*, 46 All., 616.

CHAPTER II

Section 1.

EQUAL RIGHTS OF FATHER AND SON OVER ANCESTRAL PROPERTY

Text No. 1.—" The land . . . . equal, etc."[1]

P. 122. Text No. 11.—"Even a single coparcener . . . . religious purposes. "

In the gloss of the *Mitakshara* on this text the Sanskrit expression that occurs is अवश्यं कर्तव्येषु पितृश्राद्धादिषु (*Avashyam Kartavyeshu Pitrisraddhadishu*). This expression has been subjected to judicial criticism. As regards the term आदि (*Adi*), the like—at the end of the above expression, *Muttusami Ayyar*, J., observes: " The phrase ' the like ' in para. 29, both according to Hindu law and the rule of construction, refers to annual *Sraddhas*, the ceremony of *Upanayanam* in the case of minors in the three higher classes, and of marriage in the case of girls belonging to those classes before they attain their puberty, and in short to such ceremonies as, if unperformed, would entail a forfeiture of caste or status, etc."[2] It was held, in a later case, that that expression could not be extended to the *marriage of males*.[3] This interpretation was dissented from in a still later case,[4] where it was observed that " the word ' *Adi* ' which is translated ' or *the like* ' means ' beginning with ' and merely indicates that the father's ceremony which is named is one out of a group of ceremonies. There is no implication that forfeiture of caste is a consequence of a failure to perform the obsequies and that a similar consequence flows from a failure to perform other ceremonies which are grouped together with the obsequies of the father."

The expression " for the sake of the family, " कुटुम्बार्थे, has been noticed and explained by the Allahabad High Court. According to the judges of that Court the expression would be " better translated ' for purposes of the members of the family.' "[5]

P. 123. Text No. 13.—" If a son . . . . with them."

[1] For a learned discussion of this and other passages in this connexion, see *Apaji* v. *Ramchandra*, 16 Bom., 29, (*Per* TELANG, J.)

[2] *Ponnappa Pillai* v. *Pappuvayyangar*, 4 Mad., 1, 17.

[3] *Govindarasulu* v. *Devarabhotla*, 27 Mad., 206, 209.

[4] *Kameswara Sastri* v. *Veeracharlu*, 34 Mad., 422, at 434, 435. *Cf.* *Sundrabai* v. *Shivnarayana*, 32 Bom., 81, 89.

[5] *Inspector Singh* v. *Kharak Singh*, 50 All., 776, 781.

The rule in this text has been adopted in the decisions.[1] *Cf.* **Text No. 44** at p. 157.

P. 125. Text No. 14.—"(A) If a son .... income and expenditure."[2]

P. 136. Text No. 26.—" If he makes .... or by the father-in-law."[3]

The expression " wife " in relation to " sons " includes their step-mother.[4]

In the comment of the *Mitakshara*, viz., " In cases where Stridhana has been given to the wife, *half-a-share* shall be allotted to her," *half-a-share* has been explained as meaning " so much as with what had been before given as separate property (Stridhana) will make it equal to a son's share."[5]

P. 273. Text No. 199.—" The adopted son .... the funeral offerings cease."

The result of adoption has been spoken of as the transfer of the adopted son out of his natural family into the adopting family, so far as regards all rights of inheritance and the duties and obligations connected therewith. Whether this is tantamount to civil death in the family of birth and re-birth of the boy in the family of adoption is an unsettled question. The Madras High Court has refused to accept the doctrine that adoption operates as civil death.[6] The High Court of Bombay, on the other hand, has declined to accept this view as correct.[7] The Calcutta High Court is in agreement with the High Court of Madras following a previous decision of theirs.[8] The effect of these views would be that according to the Madras and the Calcutta High Courts, adoption would not divest any property that had vested in the adopted son *previous* to the adoption; while according to the Bombay High Court the result would be that where property had vested in a

[1] *Kalidas* v. *Krishan*, 2 Beng. L. R., 103, 118—21 (F. B.); *Nawal Singh* v. *Bhagwan Singh*, 4 All., 427.

[2] *Krishna* v. *Sami*, 9 Mad., 64, 71.

[3] *Partap Singh* v. *Dalip Singh*, 52 All., 596.

[4] *Ibid.*, *Hoshanna* v. *Devanna*, 48 Bom., 468.

[5] *Jodoonath Dey Sircar* v. *Brojonath Dey Sircar*, 12 Beng. L. R., 385. *Cf.* also *Kishori Mohun Ghose* v. *Moni Mohun Ghose*, 12 Cal., 165.

[6] *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row*, 29 Mad., 437.

[7] *Dattatraya Sakharam* v. *Govind Sambhaji*, 40 Bom., 429.

[8] *Behari Lal Laha* v. *Kailas Chunder Laha*, 1 C. W. N., 121; *Shyamacharan Chattopadhyaya* v. *Sricharan Chattopadhyaya*, 56 Cal., 1135 (*Dayabhaga cases*).

person *as the heir to his father*, and such person was subsequently adopted into another family, he would lose by adoption his rights in that property.

P. 275. Text No. 200.—"If after the taking . . . in auspicious acts."

P. 276. Text No. 201.—"On the birth of the legitimate son . . . receive only food and clothing."

The above two texts state that where a son is born after adoption to the adoptive father, the adopted son takes—

(1) in Bengal, one-third of the adoptive father's estate ; *i.e.*, one-half of what *a* legitimate son would take ;

(2) in Benares, one-fourth of the estate ; *i.e.*, one-third of what *a* legitimate son would take.

The Calcutta High Court has taken this view.[1] But in the case of Sudras, in Madras and Bengal, an adopted son shares *equally* on partition with an after-born natural son.[2]

P. 294. Text No. 219.—"The son born to a Sudra . . . . . daughter's sons."

The above text was interpreted by the Privy Council in *Kamulammal* v. *Visvanathaswami*,[3] to mean that an illegitimate son takes one-half of what he *would have taken* if he were legitimate, that is to say, the illegitimate son takes one-fourth, and the legitimate son takes three-fourths. If there be no widow, daughter or daughter's son, the illegitimate son takes the whole estate.[4] An adopted son stands on the same footing as a legitimate son.[5] The legitimate son and the illegitimate son inherit their father's property as *coparceners* with a right of *survivorship*.[6] The illegitimate son of a Sudra inherits only to his father ; he has no claim to inherit to *collaterals*.[7]

P. 314. Text No. 241.—"Whether a Brahmana . . . Sudra wife."

Marriage between a Brahmana male and Sudra female is called (in Bombay) *anuloma* marriage and is valid, and a son

[1] *Birbhadra Rath* v. *Kalpataru*, 1 C. L. J., 388.

[2] *Perrazu* v. *Subbarayadu*, 48 I. A., 280; S. C. 44 Mad., 656.

[3] 50 I. A., 32; S.C. 46 Mad., 167.

[4] *Saraswuti* v. *Mannu*, 2 All., 134.

[5] *Maharaja of Kolhapur* v. *Sundaram*, 48 Mad., 1.

[6] *Jogendro* v. *Nityanand*, 17 I. A., 128 ; S.C. 18 Cal., 151.

[7] *Shome Shankar* v. *Rajesar*, 21 All., 99 ; *Ayiswaryanandaji* v. *Sivaji*, 49 Mad., 116; *Raj Fateh Singh* v. *Baldeo Singh*, 3 Luck., 416.

born of such marriage is legitimate. He is entitled to one-tenth share in the estate of his father.[1]

P. 317. Text No. 242.—"If a son . . . such is the settled law."

With reference to this text, the first question that arises is as to the nature of the connexion out of which the illegitimate son contemplated by it must issue. Is the text to be taken literally, as denoting that the mother must be the slave of the father, or does it denote a son born from a concubine, or the offspring of a merely temporary intercourse? On this point there was a direct conflict of authority between the Calcutta High Court and the other High Courts. The controversy has, however, been finally laid to rest by the Full Bench of the Calcutta High Court,[2] and the law is now uniform throughout India.

II. [3 (h)]

Miscellaneous Rules Regarding Sons' Inheritance

P. 347. Text No. 288.—"If a son is born . . . share it with them."

P. 349. Text No. 289.—" Those who have . . . partition."

For a discussion of these texts concerning the rights of sons born after partition, see **Mayne:** *Hindu Law*, 9th ed., 682-83 (§472).

II. O [3 (i)]

Partition Among Sons With Preferential Shares

The principle of Hindu law is equality of division, but this was formerly subject to many exceptions, which have almost, if not altogether, disappeared. One of these exceptions was in favour of the eldest son, who was originally entitled to a special share on partition, either a tenth or a twentieth in excess of the others, or some special chattel, or an extra portion of the flocks.[3] The invariable rule at present as between brothers or other relations is one of absolute equality, except where a special family custom to the contrary is made out;[4] and this rule applies whether the partition is made by the father, or after his death.[5]

[1] *Natha Nathuram* v. *Mehta Chotalal*, 55 Bom., 1.

[2] *Rajaninath Das* v. *Nitai Chandra Dey*, 48 Cal., 643 (F.B.); *Mayne: Hindu Law* (9th ed.), pp. 800-804 (§§ 547—549).

[3] *Mayne*: *Hindu Law*, 9th ed., p. 703 (§ 488).

[4] *Sheo Buksh* v. *Futteh*, 2 S.D.A., 265 (340); 2 W. MacN., 16.

[5] *Lakshman* v. *Ramchandra*, 1 Bom., 561.

II. (3) (f)

SHARES FOR SISTERS.

P. 383. Text No. 328.—"Of their own .... would become degraded."

P. 389. Text No. 332.—"Those brothers .... the fourth part of their share."

These texts have been fully discussed by the Calcutta High Court, and, basing their view on them, the judges have held that "it is competent to a Hindu widow governed by the *Mitakshara* law to make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of the daughter's *gowna* ceremony (at which the marriage of the daughter is completed and consummated); and such a gift is binding on the reversionary heirs."[1]

P. 394.

II. (3) (g)

SACRAMENTAL RITES OF BROTHERS AND SISTERS

As to the meaning of initiation in the case of males and females, the undermentioned cases may be referred to.[2]

P. 398.

II. (3) (h)

CLAIMS OF WIFE

Text No. 345.—"When sons are ... their mother[3] shall receive an equal share."

II. (4)

Page 404. Text No. 353.—"If one who ... he is said to be re-united."

The commentators are not unanimous in their interpretation of this text, for while the *Mitakshara*, the *Dayabhaga*, and the *Smriti Chandrika* hold that the enumeration of persons with whom re-union may take place is *exhaustive*,[4] the *Vivada Chintamani*

[1] *Churaman* v. *Gopi Sahu*, 37 Cal., 1, followed in *Jowala Ram* v. *Harikishen*, 5 Lah., 70 and *Udai Dat* v. *Ambika Prasad*, 2 Luck., 412.

[2] *Churaman* v. *Gopi Sahu*, *ubi sup.*; *Sundrabai* v. *Shivnarayana*, 32 Bom., 81, 86, 87—96; *Gopalakrishnan* v. *Venkatanarasa*, 37 Mad., 273.

[3] For a discussion as to the persons indicated by the word *mother*, see *Mari* v. *Chinnammal*, 8 Mad., 107, 116, 118, 121 *et seq.*

[4] *Basanta Kumar* v. *Jogendra Nath*, 33 Cal., 371.

and the *Mayukha* are of opinion that the enumeration is merely *illustrative*, and that a person may re-unite with *any* relation who was a party to the original partition.[1]

Page 409. Text No. 358.—"If coparceners . . . there is no primogeniture."

Page 411. Text No. 359.—"If the eldest . . . consanguineous sisters."

Page 415. Text No. 360.—"(A) If a re-united . . . uterine brother."

Page 421. Text No. 361.—"Even though . . . another mother."

These texts have been discussed at length by Mayne.[2]

It has been held in Madras that persons who are parties to a registered deed of partition may re-unite by an *oral* agreement.[3]

Decisions on this topic are scanty. They are collected in Mayne as noted below.

[1] *Lakshmibai* v. *Ganpat Moroba*, 4 Bom. H.C. (O.C.J.), 150, 166.

[2] *Mayne* : *Hindu Law*, 9th ed., pp. 861—65 (§§ 586—587).

[3] *Mahalakshmamma* v. *Suryanarayana*, 51 Mad., 977.

CHAPTER III

Section I

SEVERAL HEIRS MENTIONED TOGETHER

The enumeration and classification of heirs given by Yajnavalkya (p. 435, Text No. 2) form the basis of the Hindu law of inheritance. The texts do not give an *exhaustive* enumeration of heirs. They merely declare the different *classes* of heirs who are entitled to succeed, and determine their *order of succession*. Each preceding class of heirs must be thoroughly exhausted before we come to the heirs of the next class. The first class of heirs is the 'sons,' and the last, 'fellow-students.' The king, the *ultimus hære* of Hindu law, is not mentioned as an heir by Yajnavalkya. We have thus *ten* classes of heirs :—

1. Sons.
2. Widows.
3. Daughters, including their sons.
4. Parents.
5. Brothers.
6. Sons of brothers.
7. *Gotrajas.*
8. *Bandhus.*
9. Pupils.
10. Fellow-students.

A whole treatise might be written on this subject. In an appendix of this kind we must content ourselves with noting a few only of the points of special interest.

As to *widows*.—

(*i*) *Unchastity*.—An unchaste widow is not entitled to inherit to her husband. But once the husband's estate has vested in her, (which can only happen if she was chaste at the time of her husband's death), it will not be divested by unchastity ***subsequent*** to her husband's death.[1]

(*ii*) *Re-marriage*.—The Hindu Widows' Re-marriage Act, 1856, regulates the law as to succession to husband's estate. The Act

[1] *Moniram* v. *Keri Kolitani*, 7 I. A., 115; 5 Cal., 776; *Sellam* v. *Chinnammal*, 24 Mad., 441; *Gangadhar* v. *Yellu*, 36 Bom., 138.

may be referred to. A question of some importance arises in the case of a widow who has *ceased* to be a Hindu before her remarriage, *e.g.*, by conversion to the Muslim faith. Does she forfeit her rights to her husband's property? There is a conflict on this point. The Calcutta,[1] Madras,[2] and Patna[3] High Courts answer in the affirmative. The Allahabad High Court answers in the negative.[4] There is also a conflict on the point whether a widow who is entitled to re-marry by the *custom of the caste* to which she belongs, forfeits her interest in her husband's estate by re-marriage. According to the Allahabad High Court[5] [followed by the Oudh Chief Court[6]], NO; according to the other High Courts, YES.[7]

As to *daughters.*—

(*i*) Daughters do not inherit until all the widows are dead. As between daughters, the inheritance goes, first, to the unmarried daughters [*cf.* p. 483, Texts Nos. 63, 64; p. 484, Text No. 66], next, to daughters who are married and "unprovided for," that is, indigent [*cf.* Chap. III, p. 484, Text No. 66], and, lastly, to daughters who are married and are "enriched," that is, possessed of means.

(*ii*) Unchastity of a daughter is no ground for exclusion from inheritance,[9] except that where there is an unmarried daughter who is a prostitute and a married daughter who is chaste, the latter succeeds in preference to the former.[10] Under the *Mitakshara* law, a widow is the only female who is excluded from inheritance by reason of unchastity.[11]

DAUGHTER'S SON.—For the historical reason assigned for the favour shown to the *daughter's son* in the list of heirs, see Mayne.[12]

[1] ***Matungini*** v. ***Ram Rutton***, 19 Cal., 289.

[2] ***Vitta*** v. ***Chatakondu***, 41 Mad., 1078.

[3] ***Mussammat Suraj*** v. ***Attar***, 1 Pat., 706.

[4] ***Abdul Aziz*** v. ***Nirma***, 35 All., 466.

[5] ***Mangat*** v. ***Bharto***, 49 All., 208.

[6] ***Ramlal*** v. ***Musammat Jwala***, 3 Luck., 610.

[7] ***Vithu*** v. ***Govinda***, 22 Bom., 321; ***Rasul*** v. ***Ram Surun***, 22 Cal., 589; ***Murugayi*** v. ***Viramakali***, 1 Mad., 226; ***Suraj*** v. ***Attar***, 1 Pat., 706; ***Santala*** v. ***Badaswari***, 50 Cal., 727.

[8] ***Manki*** v. ***Kundan***, 47 All., 403

[9] ***Advyapa*** v. ***Rudrava***, 4 Bom., 104; ***Kojiyadu*** v. ***Lakshmi***, Mad., 149, 156.

[10] ***Tara*** v. ***Krishna***, 31, Bom., 495.

[11] ***Vedammal*** v. ***Vedanayaga***, 31 Mad., 100.

[12] ***Hindu Law***, 9th ed., p. 823 (§562). Also ***Karuppai Nachiar*** v. ***Sankara Narayanan***, 27 Mad., 300, 311.

As to when his right accrues and the nature of the estate taken by him, see Mayne.[1]

PARENTS.—The line of descent from the owner being now exhausted the next to inherit are his parents. And here, for the first time, there is a variance between the different schools of law as to the order in which they take. For a discussion of this, see Mayne.[2] It is now settled that, according to the *Mitakshara* law and the systems following it, the *mother* has precedence over the *father* on the ground of *propinquity* which is the governing principle under those systems. According to the *Mayukha* law the father succeeds before the mother; and the *Dayabhaga* also gives him precedence. A *step-mother* does not succeed to her step-son,[3] except in the Bombay Presidency, where she is held entitled to inherit as a *sagotra sapinda.*[4]

BROTHERS.—Next to parents come *brothers.* There are texts showing that brothers were preferred to parents, but the principle of propinquity in this, as in other cases, turned the scale. Among brothers, those of the *whole blood* succeed before those of the *half-blood.*[5] The half-brothers referred to are sons of the same father by a different mother. Sons of the same mother by a different father are not entitled to succeed as "brothers."[6] According to the *Mayukha,* brothers of the half-blood share with the father's father.[7]

NEPHEWS.—In default of all brothers of the whole or half blood, the sons of brothers, or nephews, succeed. According to the Benares and Bengal Schools, no nephew can succeed as long as there is any brother capable of taking, the rule being universal that except in the case of a man's own male issue, the nearer *sapinda* always excludes the more remote.[8] There is the same order of precedence between sons of brothers of whole and of half blood as prevails between brothers.[9] The rule of succession as

[1] *Hindu Law,* 9th ed., pp. 825—28 (§§ 563—564) and cases discussed therein.

[2] *Hindu Law,* 9th ed., p. 829. (§ 565).

[3] *Tahaldai* v. *Gaya Pershad,* 37 Cal., 214; *Seethai* v. *Nachiar,* 37 Mad., 286.

[4] *Russoobai* v. *Zoolekhabai,* 19 Bom., 707.

[5] *Thakur Anant Singh* v. *Thakur Durga Singh,* 37 I. A., 191; S. C. 32 All., 363.

[6] *Ekoba* v. *Kashiram,* 46 Bom., 716.

[7] Chap. I., Sec. 8, Para. 20.

[8] *Prithee* v. *The Court of Wards,* 23 W. R., 273.

[9] *Kylash* v. *Gooroo,* 3 W. R., 43, affirmed 6 W. R., 93.

far as the brother's son is clear and definite, and the brother's son succeeds before the brother's son's son.[1] There was a conflict of opinion as to the order of succession after the brother's son. The conflict has now been laid to rest by the Privy Council.[2] The "compact series of heirs" under the *Mitakshara* as interpreted by the Privy Council ends with the *brother's son's son* instead of the *brother's son*. The Madras High Court took the view that the word *putra* meant only the *brother's son*, including only *two* degrees of descendants of the ancestor from whom they sprung.[3]

A reference to the table of heirs will show that the *gotrajas* (gentiles) and *bandhus* (cognates) belong respectively to the seventh and eighth classes of heirs. According to the *Mitakshara* the *gotrajas* exclude the *bandhus* in conformity with the text of Yajnavalkya, *viz.*,—"On failure of the first among these the next in order is indeed heir to the estate of one who departed for heaven leaving no *putra* or male issue." (II, 135). Who are the *gotrajas* ? The *Mitakshara* says: "*Gotrajas* are the paternal grandmother, *sapindas* and *samanodakas*." Vijnaneswara next defines the *sapîndas* and *samanodakas* relying on the text of Manu or Vrihat Manu. (*Cf.* Ch. III, Texts Nos. 112, 113 at pp. 507, 509.)

As will appear from these texts "the relation of the *sapindas* ceases with the seventh person, and that of *samanodakas* extends to the fourteenth degree, or, as some affirm, it reaches as far as the memory of birth and name extends." Vijnaneswara adds that "the *samanodakas* must be understood to reach to seven degrees beyond the kindred known as *sapindas*; or else, as far as the limits of knowledge as to birth and name extend." Coming to precedence among them the order is like this: On the exhaustion of the male descendants in the line of the owner's father, a similar course is adopted with regard to the line of his grandfather and great-grandfather. In each case, according to the *Mitakshara*, the grandmother and great-grandmother take before the grandfather and great-grandfather. Then come their issue to the third degree inclusive. In these more distant relationships the High Court of Bombay holds that there is no preference of the whole blood over half-blood, in cases governed by the *Mitakshara*

[1] *Sher Singh* v. *Basdeo Singh*, 50 All., 904.

[2] *Buddha Singh* v. *Laltu Singh*, 42 I. A., 208; S.C. 37 All., 604.

[3] *Chinnasami* v. *Kunju*, I. L. R., 35 Mad., 152.

and the *Mayukha.*[1] A Full Bench of the Allahabad High Court has arrived at an opposite conclusion,[2] and the High Courts of Bengal [3] and Madras [4] are in agreement with it.

The above order exhausts all the *gotraja sapindas* of the nearest class. Then follow the *samanodakas*, the nearer line excluding the more remote, and a nearer kinsman in one line excluding a remoter kinsman in the same line.[5]

On failure of *sapindas* and *samanodakas*, but not until then, the inheritance passes to *bandhus.*[6]

Certain relations have been expressly mentioned as *bandhus*, but this enumeration is illustrative and not exhaustive.[7] The rules for determining who are heritable *bandhus* have also been laid down.[8] The following cases, too, are important.[9]

Section 8.

OTHER HEIRS: THE KING, ETC.

Page 513. Text No. 119.—"The property . . . in the reverse order."

This text propounds the special rule for succession to the property of a hermit, etc., and no one can come under the head of hermit, etc., for the purpose of introducing a new rule of inheritance, unless he has absolutely retired from all earthly interests, and, in fact, become dead to the world. In such a case all property then vested in him passes to his legal heirs, who succeed to it at

[1] *Shankar Baji* v. *Kashinath*, 51 Bom., 194.

[2] *Suba Singh* v. *Sarafraz*, 19 All., 215; see *Kesri* v. *Ganga Sahai*, 32 All., 541, affirmed on appeal *sub nom. Ganga Sahai* v. *Kesri*, 42 I. A., 177; S. C. 37 All., 545, where it was held that an uncle of the half-blood is entitled to priority over the son of an uncle of the whole blood.

[3] *Sham Singh* v. *Kishan Sahai*, 6 Cal. L. J., 190.

[4] *Nachiappa* v. *Ranga Sami*, 28 Mad. L. J., 1.

[5] *Sarvadhikari*: *Hindu Law of Inheritance*, p. 687.

[6] *Ram Baran* v *Kamla Prasad*, 32 All., 594.

[7] *Gridhari Lall* v. *The Bengal Government*, 12 M. I. A., 448.

[8] *Ram Chandra* v. *Vinayek*, 41 I. A., 290; S. C. 42 Cal., 384.

[9] *Shib Sahai* v. *Saraswati*, 37 All., 583; *Ram Sia* v. *Bua*, 47 All., 10; *Babu Lal* v. *Nanku Ram*, 22 Cal., 339; *Kesar Singh* v. *The Secretary of State*, 49 Mad., 652; *Gajadhar Prasad* v. *Gauri Shankar*, 54 All., 698, (F. B.) *Vedachala* v. *Subramania*, 48 I. A., 349; S.C. 44 Mad., 753; *Adit Narayan* v *Mahabir*, 48 I. A., 86; *Jotindra Nath* v. *Nagendra Nath*, 58 I. A., 372.

once.[1] The rule in the text applies only to members of the twice-born classes. It does not apply to Sudras unless some usage or custom to that effect is proved.[2]

Pages 517 Sqq. Texts Nos. 121 – 132.—These texts lay down rules relating to succession where there are no relations. These heirs are enumerated in the *Mitakshara.*[3] Finally, in default of all the other heirs, the king takes by escheat, except the property of a Brahman, which, it is said, can never fall to the Crown.[4] The direction that the king can never take the estate of a Brahman has been overthrown in a case in which the exemption was set up.[5]

[1] *Mayne*: *Hindu Law*, 9th. ed., § 590, p. 867.

[2] *Harish Chandra* v. *Atir Mahmud*, 40 Cal., 545; *Somasundaram* v. *Vaithilinga*, 40 Mad., 846; *Sobhaddi* v. *Gobind*, 46 All., 616; cf. *Sambasivam* v. *The Secretary of State for India*, 44 Mad., 704.

[3] *Mitakshara*, ii., 7, §§ 1—4.

[4] *Mitakshara*, ii., 7, §§ 5, 6; *Dayabhaga*, xi., 6. § 27.

[5] *The Collector of Masulipatam* v. *Cavaly Vencata*, 8 M. I. A., 500.

CHAPTER IV

Section 1

NATURE OF STRIDHANA

Pages 526—541. Texts Nos. 1—17.—After discussing these texts Sir Gooroo Dass Banerjee observes as follows: "None of the foregoing texts gives any exact definition of *stridhana*. They enumerate and describe different kinds of *stridhana*, without aiming at any logical classification. Nor is the number of kinds definitely settled though it is sometimes said to be six. Thus Katyayana enumerates six kinds, but describes several additional sorts. But one thing is clear from an examination of the texts, namely, that the term *stridhana*, is not used in its simple etymological sense, but has a technical meaning. If it were otherwise, and if by *stridhana* were meant any property belonging to a woman, the enumeration of particular descriptions of property as coming under that denomination would be useless. And the last text cited from Katyayana (herein Texts Nos. 3 and 4) would go expressly to negative such a supposition." He concludes the discussion in these words: "It may, therefore, be deduced . . . that as a rule, it is only gifts obtained by a woman from her relations, and her ornaments and apparel, that constitute her *stridhana*, and that the only sorts of gifts from strangers which come under that denomination are, presents before the nuptial fire, and (according to some) presents made at the bridal procession. But neither gifts obtained from strangers at any other time, nor her acquisition by labour and skill would constitute her *stridhana*."[1] At this point it may not be out of place to refer to the suppletive term '*adya*' adopted by the *Mitakshara* in its reading of the text of Yajnavalkya (Text No. 7 at page 532). In commenting upon this text the *Mitakshara* in the first portion reproduces the descriptions of particular kinds of *stridhana*, known by definite names, and in the second portion expands the word '*adya*' which occurs in Yajnavalkya so that in *stridhana* are included five distinct kinds

[1] *Gooroo Dass Banerjee : Marriage and Stridhana*, 5th ed., pp. 326—27.

of property of which no mention is made by the early sages, *viz.*,—property obtained by—

(*i*) inheritance;

(*ii*) purchase;

(*iii*) partition;

(*iv*) seizure;

(*v*) finding; and then it is expressly said that *stridhana*, conformably to its derivation, means property of any description belonging to a woman. And this unlimited sense is deduced from the suppletory term '*adya*' ('and the rest') in the text of Yajnavalkya.[1] Remarking on the definition in the *Mitakshara* the Madras High Court says: "It is scarcely necessary to say that Vijnaneswara's statement that *stridhanam* is not to be understood in a technical sense (*Mitak.*, Ch. II, Sec. 11, § 3) was not mere philological observation. By laying down that proposition, Vijnaneswara and other great commentators who followed him, succeeded in effecting a beneficial change in the archaic Smriti law and placed women almost on a footing of equality with men as regards the capacity to hold property."[2] In the Benares school, the *Viramitrodaya*, like the *Mitakshara*, maintains that whatever is owned by a woman is her *stridhana*.[3] In the Bombay school, the leading authorities are the *Mitakshara* and the *Vyavahara Mayukha*. The latter seems to adopt the definition of *stridhana*, as given in the *Mitakshara*. In treating of succession, however, it draws a distinction between *paribhasika stridhana* or *stridhana* proper, and what is acquired by the act of partition and the like.[4] This would show that the *Mayukha* assigns to the simple term *stridhana* the same unlimited signification that it has in the *Mitakshara*. So far as the Madras school is concerned the chief authorities are the *Smriti Chandrika* and the *Parasara Madhavya* in addition to the *Mitakshara*, The *Parasara Madhavya* agrees with the *Mitakshara* in many respects, but it gives to the suppletory term '*adya*,' a limited signification, as including property purchased with what is given during the bridal procession, etc.; and it admits upon the authority of Katyayana's texts that gifts upon condition or with a design or from strangers, and gains by mechanical arts,

[1] *Mitakshara*, Ch. II, Sec. 11.

[2] *Salemma v. Lutchmana Reddi*, 21 Mad., 100, 103-4.

[3] Golap Chandra Sarkar's translation, Ch. V.

[4] Chap. IV, Sec. 10.

(Text No. 25 at p. 546; Text No. 23 at p. 544), do not constitute *stridhana*. Referring to the conflict among the authorities the Madras High Court remarks: "In this state of the authorities, when there is not such consensus of opinion among the commentaries prevalent in this part of India as to suggest that the law of the *Mitakshara* on the point was not recognized or was departed from, it seems to us to be best to follow the *Mitakshara*."[1] In the Mithila school the tendency seems to be to restrict the signification of the term *stridhana* to the kinds of property enumerated in the *Smritis*. In the Bengal school, the *Dayabhaga* of Jimutavahana is the leading authority; "unlike the work of Vijnaneswara, from which it differs on many important points, the *Dayabhaga* restricts the application of the term to certain descriptions of property belonging to a woman. Generally speaking, woman's property has two peculiarities attaching to it:—(1) she has absolute power of disposal over it, notwithstanding her general want of independence; and (2) it follows a special order of succession. Now, the former of these peculiarities does not, according to texts of Katyayana (Text No. 4 at p. 529; Text No. 23 at p. 544), attach to every sort of property belonging to a woman, and accordingly, to reconcile their unlimited literal interpretation of the term *stridhana* with these texts, the *Viramitrodaya* and the *Mayukha* expressly affirm that a woman's power of disposal is absolute, not with regard to every kind of her *stridhana*, but only with regard to certain kinds of it. Jimutavahana, on the contrary, maintains, that property belonging to a woman, in order that it may properly be called *stridhana*, must possess the quality of being alienable by her at pleasure."[2]

It may not be out of place here to mention how the definition of *stridhana* as given in the *Mitakshara* has been modified by judicial decisions. Vijnaneswara mentions five recognized modes of acquiring property and holds that in each of those cases the property so acquired will be *stridhana* of the acquirer. Even at the risk of repetition we shall enumerate them here:—(1) inheritance; (2) purchase; (3) partition; (4) seizure; and (5) finding. Now, as to (1), the Judicial Committee has held that both under the *Mitakshara* and the *Dayabhaga* schools a woman takes a *limited*

[1] *Salemma* v. *Lutchmana Reddi*, *ubi sup.*

[2] *Gooroo Dass Banerjee: Marriage and Stridhana*, 5th ed., pp. 338-39. Cf. *Sheo Shankar* v. *Debi Sahai*, 30 I. A., 202; S. C. 25 All., 468.

estate by inheritance, whether from a male,[1] or from a female,[2] and that on her death it passes not to *her* heirs but to the *heirs of the last holder* from whom she inherited. In the second class of cases the question was whether *stridhana* of one female inherited by another would be the *stridhana* of the latter. The answer was in the negative. The rule is different, however, in Bombay alone, where it becomes *stridhana* when the property is inherited by a female who leaves the *gotra* of the deceased by marriage. (See *supra*). As to, (3) when the share is obtained by a widow on partition of the joint family property it has been held that it is *not* her *stridhana*.[3] The rule is the same under the *Dayabhaga*.[4]

The correctness of the decisions of the Privy Council concerning the property obtained by a female by inheritance from a male, varying as they do the simple rule of the *Mitakshara*, has sometimes been questioned by scholars and judges; but *anent* this the opinion of Sir Gooroo Dass Banerjee, may be usefully studied.[5] The Privy Council relies upon the text of Katyayana (Text No. 22 at p. 543). The word "क्षान्ता" is translated as "frugally" after Colebrooke.

Page 529. Text No. 4.—"Whatever is obtained . . . family of her husband."

Page 537. Text No. 11.—"Property given . . . property of his own."

Page 548. Text No. 28.—"During famines . . . repay it to her."

Page 551. Text No. 31.—"Neither husband . . . . from the coparceners."

These texts formulate rules concerning the rights of a woman over her *stridhana*. With reference to this question Sir Gooroo Dass Banerjee observes: "Over certain descriptions of property a woman has at all times absolute power of disposal, and over certain other descriptions she never has such power; while regarding a third class of property her power of disposal is restrained during coverture only. Her husband again has, under certain

[1] *Bhugwandeen* v. *Myna Baee*, 11 M. I. A., 487; *Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A., 139.

[2] *Sheo Shankar* v. *Debi Sahai*, 30 I. A., 202; S. C. 25 All., 468; *Sheo Partab* v. *The Allahabad Bank*, 30 I. A., 209; S. C. 25 All., 476; *Ram Kali* v. *Gopal Dei*, 48 All., 648; *Hakum Chand* v. *Sital Prasad*, 50 All., 282.

[3] *Debi Mangal Prasad* v. *Mahadeo Prasad*, 39 I. A., 121; S. C. 34 All., 234.

[4] *Shashi Bhusan* v. *Hari Narain*, 48 Cal., 1059.

[5] *See Marriage and Stridhana*, 5th ed., pp. 349—51.

circumstances, a qualified right to use all her *stridhana*, of whatever description."[1]

These restrictions are divisible into two classes depending on (*i*) a woman's *status*, and (*ii*) the *nature* of the property.

I. As to restrictions depending on *status*. It may be deduced from the above texts that

(*i*) *During maidenhood*, a Hindu female labours under no incapacity as regards her power over *stridhana*, except what she may be under by reason of nonage ;

(*ii*) *During coverture*, she can dispose of only that kind of *stridhana* which is called *saudayika* ;

(*iii*) *During widowhood*, she can dispose of her *stridhana* of every description at her pleasure, including movable property given by the husband, but not immovable property given by him.

As to case-law on the subject the most important are *Bhau* v. *Raghunath*[2] and *Muthukaruppa* v. *Sellathammal.*[3] The husband can "take" the wife's "*saudayika*" in certain circumstances, as indicated in Text No. 28 at p. 548. This right to take is personal to him.[4] The word "take" does not mean "physical taking."[5]

II. As to restrictions depending on the nature of the property, the subject has been partially touched upon before with reference to (*a*) property inherited by a woman from a male or a female, and (*b*) share of property obtained by a woman on partition of joint family property.

Property obtained by gift or devise from a husband is never at her disposal, even after his death. It is her *stridhana* so far that it passes to *her* heirs, not to his heirs. But, as regards her power of alienation, she appears to be under the same restrictions as those that apply to property which she has inherited from a male even though the gift is made in terms which create a heritable estate.[6]

Page 555. Text No. 37.—"One addicted to . . . . deserve any property."

[1] *Marriage and Stridhana*, 5th ed., p. 872.
[2] 30 Bom., 229.
[3] 39 Mad., 298.
[4] *Tukaram* v. *Gunaji*, 8 Bom. H. C., 129.
[5] *Nammalwar* v. *Thayarammul*, 50 Mad., 941.
[6] *Mayne : Hindu Law*, 9th ed., § 664 at p. 977.

Sir Gooroo Dass Banerjee opines that this "rule laid down by Katyayana is too vague to admit of its being enforced as a strict rule of law in every case."[1]

Section 2

IV (b)

Partition of Stridhana.

With reference to the succession to woman's property, Mayne observes: "The succession to woman's property is a matter of much intricacy, as the lines of succession vary, according as the woman was married or unmarried, according as her marriage was in an approved or an unapproved form, and according to the mode in which the property was obtained. There are also differences between the doctrines of the Benares and the Bengal lawyers on this head."[2] As regards the property of a maiden, the different schools do not differ amongst themselves. The only text bearing on the subject is one which is variously ascribed to Baudhayana and to Narada.

Page 588. Text No. 75.—"The property of a dead maiden ... father."

The order of succession is something like this—

(*i*) uterine brother; (*ii*) mother; (*iii*) father.

The text is silent as to the rule of succession to be applied in default of the father. The *Viramitrodaya* supplies the omission by laying down: "In default of the mother and the father, it goes to their nearest relations," that is to say, their *sapindas*. The 'nearest relations' of the parents in this context means the *sapindas* of the father, for the mother as his wife has her individuality merged in him according to the *Mitakshara*, so that the *sapindas* of the father are the *sapindas* of the mother. If there be no *sapindas* of the father, the inheritance goes to the *sapindas* of the deceased woman herself. The Bombay High Court deduces this rule from the principle that when the specific

[1] *Marriage and Stridhana*, 5th ed., p. 393. See also, *Ganga* v. *Ghasita*, 1 All., 46; *Nogendra-nandini* v. *Benoy Krishna Deb*, 30 Cal., 521, 526; *Angammal* v. *Venkata Reddy*, 26 Mad., 509.

[2] *Hindu Law*, 9th. ed., § 665, p. 977.

enumeration stops, the general maxim laid down by the *Mitakshara*,[1] 'her kinsmen take it if she die without issue,' must take effect. Accordingly it was held that the father's mother's sister was entitled to succeed in preference to the maternal grandmother of the deceased maiden.[2] Another question is, whether the term father's *sapindas* means the direct *sapindas* of the father, or the *sapindas* of the woman related to her through her father. *Chandavarkar*, J., in a learned judgment in which he critically examines the relevant texts holds that the *father's sapindas*, and not those of the woman related through her father, are meant.[3] The Calcutta and Madras High Courts have accepted the principle of the Bombay decisions.[4] In working out the rule thus established, the nearness of the *sapinda* relationship must be determined by the particular system of law applicable to the case under consideration, always treating the father as the person proximity to whom is to be ascertained.

Devolution of *yautaka* or property given at the nuptials is dealt with next. Compare the following texts:

Page 567. Text No. 49.—" The ornaments received . . . also other things."

Page 568. Text No. 51.—" The daughters . . . (or toilet-articles)."

Gautama adds a further distinction. See

Page 559. Text No. 42.—" The *stridhana* . . . or unsettled."

None of the above texts suggest different lines of descent for the property referred to. This, for the first time, appears in Manu:

Page 566. Text No. 48.—" Whatever may be . . . daughter alone."

Page 573. Text No. 57.—" The *Anvādhēya* . . . is alive."

" This seems," says Mayne, " to be the origin of the different lines of succession, . . . treated of under the second (*yautaka*) and third (*ayautaka*) heads. "[5]

Text No. 48 (*supra*) is taken literally by the authors of the *Smriti Chandrika* and the *Viramitrodaya*, as allowing none of a woman's issue except her unmarried daughters to inherit her

[1] ii. 11, § 8.

[2] *Janglubai* v. *Jetha Appaji*, 32 Bom., 409.

[3] *Tukaram* v. *Narayan Ramchandra*, 36 Bom., 339 (F. B.)

[4] *Dwarka Nath* v. *Sarat Chandra*, 39 Cal., 319; *Sundaram Pillai* v. *Ramasamia Pillai*, 48 Mad., 32; *Kamula* v. *Bhagirathi*, 38 Mad., 45.

[5] *Hindu Law*, 9th ed., §§ 668-672, pp. 981-990.

yautaka. In default of such daughters, they make it pass at once to the husband, or to the parents, according as the marriage was in an approved or an unapproved form. But this literal interpretation is rejected by the Benares and the Bengal schools. Yajnavalkya lays down the rule of descent as follows:—

Page 577. Text No. 63.—"The *stridhana* ...... to the daughter."

This rather vague rule is expanded by the *Mitakshara* [see Notes at p. 578]. The order of succession to *yautaka* in the Benares school is stated by Mulla,[1] with reference to the expansion of the text as given in the *Mitakshara.* The Madras High Court has accepted the *Mitakshara* as the paramount authority and holds that the rule of succession is the same for all kinds of *stridhana* except *sulka.* The relevant cases are cited in Mayne's *Hindu Law*, 9th edition, § 669 A, at pages 985-986. The order of succession to *yautaka,* according to the Bengal school is similar but not exactly the same, and for the order stated in detail, Mulla may be referred to.[2]

The succession to that property belonging to a married woman which may be denominated *ayautaka* (*i.e.*, such property as is neither her *sulka* nor her *yautaka*) is a matter on which there is much variance. The relevant texts are:—

Page 557. Text No. 40.—"When the mother ... among themselves."

Page 573. Text No 57.—"The *Anvādhēya* ... is alive."

Page 575. Text No. 61.—"When a woman ... brother or father."

Page 574. Text No. 58.—"All the uterine brothers .... daughters."

Page 560. Text No. 43.—"The *stridhana* ... an honorific trifle."

Mayne observes:[3] "Vijnaneswara recognizes one line of descent for the whole of a married woman's property, except her *sulka, viz.,* that for her *yautaka.* He explains the text of Manu, not as meaning that brothers and sisters take together, but that the sisters take first and the brothers afterwards, each class sharing equally *inter se*; that is, he brings it in as an illustration of the

[1] *Hindu Law*, 7th ed., § 147 (2), pp. 145-6 and cases cited there.

[2] *Ibid.* § 155, pp. 156-7.

[3] *Hindu Law*, 9th ed., § 671, pp. 988-9.

rule previously stated as to the succession of daughters before sons, and not as an exception to it . . . But the *Smriti Chandrika, Viramitrodaya, Vivada Chintamani, Mayukha* and *Varadrajah,* all take these texts literally, as prescribing a different course of descent for the two sorts of *stridhana* there specified, *viz.*, gifts subsequent to marriage, received either from the woman's own family or the family of her husband, and gifts received from her husband. These are shared simultaneously and equally by the woman's sons and daughters being unmarried; but according to the *Mayukha*, the married daughters take with the sons in the absence of unmarried daughters. Those who are married and grand-daughters, only receive a trifle as a mark of respect, and widows are wholly excluded. But if there are no unmarried daughters, married daughters whose husbands are living, are also allowed by Katyayana to share with their own brothers.[1] The *Mayukha* classifies *stridhana* as *paribhasika* (technical) and *aparibhasika* (non-technical). In the succession to the former, the female offspring of the woman is preferred to the male ; in the succession to the latter, the males are preferred, so that even if there are daughters 'the sons and the rest, take the non-technical *stridhana*.[2]

For the order of succession to *ayautaka* under the Bengal school, see Mayne's *Hindu Law*, 9th edition, § 672, pages 989-90. It may be useful here also to call attention to the classification of *stridhana* into three sorts with reference to the rights of sons and daughters, according to the Bengal School :—

(*i*) The *yautaka* ;

(*ii*) Property given by father;

(*iii*) All other descriptions of *stridhana* (*ayautaka*).[3]

As to class (*ii*), the order of succession is deduced from the following text :—

Page 568. Text No. 52.—" The property that . . . the child of that daughter."

For a discussion of the order of succession as regards this class of property see Sir Gooroo Dass Banerjee, pp. 483—85.

[1] *Ashabai* v. *Haji Tyeb*, (Cutchi Memons), 9 Bom., 115, 126, followed in *Dayaldas* v. *Savitribai*, 34 Bom., 385.

[2] *Manilal* v. *Bai Rewa*, 17 Bom., 758. It has been held that the term "sons and the rest" means "sons, grand-sons and great grand-sons." These take not together, but successively in the order specified. *Bai Raman* v. *Jagjivandas*, 41 Bom., 618

[3] *Sir Gooroo Dass Banerjee : Marriage and Stridhana*, 5th ed., p. 478.

CHAPTER V.

MISCELLANEOUS REGULATIONS FOR DETERMINING DOUBTFUL POINTS ARISING IN CONNEXION WITH PARTITIONS.

Page 601. Text No. 6.—" Among kinsmen . . . settled rule."

Page 602. Text No. 7.—" If a son . . . it shall lapse."

These texts deal with the right of representation. Under *Mitakshara* law, the right to a share passes by survivorship among the remaining coparceners, subject to the rule that where any deceased coparcener leaves male issue, they represent the rights of their ancestor to a partition. It must always be remembered that what passes is not a share as in Bengal, but the right to have a share in partition. On this point see Mayne.[1]

Page 599. Text No. 4.—" Once does . . . only once."

Page 609. Text No. 14.—" If a certain . . . their sons."

Page 610. Text No. 16.—" If after it is . . . the settled rule."

These texts relate to the subject of re-opening a partition.[2]

[1] *Hindu Law*, 9th ed., §§ 270, 271, 473, at pp. 344, 347, 683 ; *Debi Parshad* v. *Thakur Dial*, 1 All., 105, 111 sqq.

[2] *Mayne* : *Hindu Law*, 9th ed., § 493, p. 713 et seq. ; *Mulla*: *Hindu Law*, 7th. ed., §§ 337, 338, 339, p. 409.

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